



1 19, 2023 the Court denied Petitioner's renewed motion citing the interests of justice would  
2 not require appointing counsel at the time. ECF 24.

## 3 II. FACTUAL BACKGROUND

4 After marrying a woman (Hanh Le) who is ten years older than him, Tomas  
5 Czodor (Czodor), concealed his marriage and tried to meet young women online. ECF 4,  
6 pp. 97-98. Before knowing Petitioner's name and meeting Petitioner in person, in August  
7 2018, Czodor proudly told Petitioner that he was raised as a nudist. Right after meeting  
8 Petitioner just once, while Petitioner still did not tell him her name, Czodor unsolicitedly  
9 sent Petitioner his nude photos and invited Petition to a nudist ranch. ECF 6, p. 153. After  
10 two gatherings, Czodor ghosted Petitioner. Petitioner, unaware of Czodor's marriage,  
11 went to Czodor's residence for answer on September 18, 2018. ECF 6, p. 155.

12 On September 26, 2018, eight days after Petitioner left Czodor's residence, Czodor  
13 reported the alleged vandalism and distribution of his nude photos. ECF 6, pp. 177-178.  
14 Despite during the entire time on September 18, 2023 when Petitioner was in front of  
15 Czodor's residence, Czodor had free access to his phone, making 911 call (ECF 6, p. 201),  
16 taking photos and shooting videos (ECF 6, pp. 159-163), no photos or videos show that  
17 Petitioner was actually scratching Czodor's door, no photos or videos of Petitioner with  
18 Czodor's damaged door were provided, no photos or videos show that Petitioner was  
19 standing next to Czodor's damaged door, despite Petitioner allegedly scratched Czodor's  
20 door for 20 minutes.

21 On September 10, 2018, after Petitioner allegedly threatened Czodor to distribute  
22 his nude photos, Czodor in fact made contact with the police but made no mention of  
23 Petitioner or any nude photos. ECF 6, p. 200. Despite all communication between  
24 Petitioner and Czodor was made through text messages, not a single message shows that  
25 Petitioner asked for Czodor's nude photos, not a single message shows that Czodor  
26 requested Petitioner to keep his nude photos private, not a single message shows that  
27 Petitioner made any promise to keep his nude photos private before Czodor unsolicitedly  
28 sent Petitioner his nude photos. Nevertheless, Czodor – a married man deliberately



1 concealing his marriage – sent his nude photos to Petitioner, a woman who never told him  
2 her name and met him just once, a woman who was not better than a stranger.

3 No officers ever saw Czodor's damaged door or nude photos online. No officers  
4 ever took any photos of the damaged property. No officers ever checked or examined  
5 Czodor's phone to see whether Czodor provided accurate and all relevant messages,  
6 photos and videos. No officers ever checked or examined Czodor's phone to see whether  
7 Czodor sent his nude photos to multiple people. No officers ever verified whether  
8 Czodor's story was taken out of context. No officers ever interviewed any of Czodor's  
9 friends, customers, or wife. No officers ever indeed went out and collect evidence. No  
10 officers ever performed any meaningful investigation. Anything coming out from  
11 Czodor's mouth was taken as true at face value. All "evidence" was in fact produced and  
12 provided by Czodor himself, in the form of a stack of paper, despite modern technology  
13 was readily available in 2018 and 2019 to the police. In effect, Czodor played the dual  
14 roles both as a police officer and complaining witness.

15 Six attorneys from the office of public defender cycled through Petitioner's case,  
16 none of them did any investigation, none of them ever explained to Petitioner about her  
17 constitutional rights, none of them ever tried to bring the case to trial at a meaningful time  
18 and in a meaningful manner, none of them ever meaningfully discussed the case or  
19 strategy with Petitioner, none of them asked for Petitioner's consent or authority to sign a  
20 stipulation with prosecution, none of them was able to expose Czodor's perjury and fraud,  
21 none of them ever tried to attack the integrity of police work. Petitioner was astonished at  
22 trial by her trial counsel's performance. Naturally, Petitioner was convicted of all counts  
23 she was charged.

24 After Petitioner's conviction, Czodor demanded \$51,000 to remove 25 webpages  
25 that don't even exist or aren't viewable. ECF 20, pp. 15-16. Despite each year between  
26 2014 and 2019, Czodor (a self-employed individual) reported to IRS that his net profit<sup>1</sup>

27 <sup>1</sup> An employee ordinarily agrees to work for, and receives, a set wage or salary. His wages are not directly affected  
28 by the net income of the employer. In contrast, the self-employed person operating a "business" has no more income  
available than the net income of the "business" after paying necessary expenses of the "business." For instance, a

1 was ranging only between \$5,000 and \$10,000 per year (ECF 6. pp. 141, 143, 145, 147,  
 2 149, 151), he concealed his net profit information<sup>2</sup> when requesting restitution and  
 3 demanded \$26,496<sup>3</sup> to compensate his income loss in 2018 and 2019, apparently for the  
 4 purposes to make a windfall. Based on Czodor's net profit each year, he was in fact as  
 5 poor as a church mouse. However, this church mouse was capable of staging crimes and  
 6 manipulating the system to grant him a windfall.

7 In 2023 the prosecution, based on the exact same old evidence, prosecuted  
 8 Petitioner once again alleging Petitioner failed to remove Czodor's nude photos posted in  
 9 2018, Case No.: **23CM00067**. CF 1-138.<sup>4</sup> After the acquittal, Petitioner filed two requests  
 10 for transcripts but the trial court denied her second request. CF 139-144. After the trial  
 11 court denied her request for records of Case No.: **23CM00067** on July 24, 2023, Petitioner  
 12 immediately requested the case files from her court appointed counsel. However,  
 13 Petitioner's counsel was unable to provide the case files until August 27, 2023 because  
 14 she was out of the country. Subsequently, Petitioner has been diligently compiling  
 15 exhibits, conducting legal research, and readying a new habeas petition under her  
 16 mistaken belief that she could not present new evidence in the instant case. While she was  
 17 preparing a new habeas petition to state court Petitioner came across cases involving  
 18

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19 person who sold \$10,000 worth of merchandise with a wholesale cost of \$5,000 and who had **out-of-pocket**  
 20 **business-related expenses** of \$2,000 would only have \$3,000 in **actual available earnings**. If the income loss was  
 21 based on gross revenue of \$5,000 rather than **net earnings** of \$3,000, the person would be awarded a windfall of  
 22 \$2,000 he would not have received if he had worked. Damage awards in injury to business cases are based on net  
 23 profits. (See, e.g., *Kuffel v. Seaside Oil Co.* (1970) 11 Cal.App.3d 354, 366 [90 Cal.Rptr. 209] ["It is fundamental that  
 24 in awarding damages for the loss of profits, net profits, not gross profits, are the proper measure of recovery"].) "Net  
 25 profits are the gains made from sales 'after deducting the value of the labor, materials, rents, and all expenses,  
 26 together with the interest of the capital employed.' [Citation.]" [Citations.]" (See *Kids' Universe v. In2Labs* (2002) 95  
 27 Cal.App.4th 870, 884 [116 Cal.Rptr.2d 158] (*Kids' Universe*). "Lost anticipated profits cannot be recovered if it is  
 28 uncertain whether any profit would have been derived at all from the proposed undertaking. But lost prospective net  
 profits may be recovered if the evidence shows, with reasonable certainty, both their occurrence and extent.  
 [Citation.] It is enough to demonstrate a reasonable probability that profits would have been earned except for the  
 defendant's conduct. [Citations.] Moreover, . . . a plaintiff is 'not required to establish the amount of its damages with  
 absolute precision. . . . [Citation.]' [Citations.]" (*Kids' Universe*, supra, 95 Cal.App.4th at 1181 pp. 883-884.) Not  
 only Czodor did not establish income loss, he did not establish any certainty of his income.

<sup>2</sup> Petitioner's court appointed counsel discovered Czodor's net profit by subpoenaing California Franchise Tax Board.

<sup>3</sup> This requested amount of income loss is almost equal to Czodor's combined net profit in four years between 2015 and 2018.

<sup>4</sup> The case file of Case No.: 23CM00067 is referred to as CF, as attached as Exhibit 2.

1 expanding record in federal habeas cases. Luo Decl., ¶ 2.

### 2 **III. GROUNDS FOR DISCOVERY AND APPOINTMENT OF COUNSEL**

#### 3 **A. Petitioner Is Entitled to Introduce New Evidence and Expand Record under** 4 **Rule 7 of the Rules Governing Section 2254 Cases**

5 In *Holland v. Jackson*, 542 U.S. 649 (2004), the United States Supreme Court held  
6 that, whether or not a federal habeas petitioner seeks an evidentiary hearing, new evidence  
7 may only be considered in a federal habeas corpus proceeding when the failure to develop  
8 the facts in state court are not the petitioner's fault, or when the requirements of 28 U.S.C.  
9 § 2254(e)(2) are satisfied. *Holland*, 124 S.Ct. at 2738 (citing *Williams v. Taylor*, 529 U.S.  
10 420, 431-437 (2000)). In *Cooper-Smith*, the United States Court of Appeals for the Ninth  
11 Circuit held that it is proper to require a petitioner to make the showing required by §  
12 2254(e)(2) when seeking to expand the record pursuant to Rule 7, 28 U.S.C. foll. § 2254.  
13 *Cooper-Smith*, 397 F.3d at 1241.

14 "[N]ew factual allegations do not render a claim unexhausted unless they  
15 "fundamentally alter the legal claim already considered by the state courts." *Chacon v.*  
16 *Wood*, 36 F.3d 1459, 1468 (9th Cir. 1994) (quoting *Vasquez v. Hillery*, 474 U.S. 254, 260,  
17 106 S.Ct. 617, 88 L.Ed.2d 598 (1986))." *Belmontes v. Brown*, 414 1094, 1117 (9th Cir.  
18 2005). The presented facts, actions of defense counsel, and trial court's decisions during  
19 the 2023 prosecution do not "fundamentally alter" petitioner's ineffective assistance of  
20 counsel claim, unlawful amendment of complaint one day before trial, erroneous jury  
21 instruction claim, and actual innocence claim, therefore admission of the 2023 prosecution  
22 transcripts will not render those claims unexhausted.

23 In *Williams*, the United States Supreme Court held in relevant part that "[i]f there  
24 has been no lack of diligence at the relevant stages of the state court proceedings, the  
25 prisoner has not 'failed to develop' the facts under § 2254(e)(2)'s opening clause, and he  
26 will be excused from showing compliance with the balance of the subsection's  
27 requirements." *Williams*, 529 U.S. at 437.

28 The claims that could be supported by the 2023 prosecution have been presented to

1 California Supreme Court. Petitioner did not, therefore, show a lack of diligence in the  
2 state court proceedings and is not required to make a showing under § 2254(e)(2). Even if  
3 so required, Petitioner could not have been previously discovered through the exercise of  
4 due diligence, and the facts underlying the claim would be sufficient to establish by clear  
5 and convincing evidence that but for constitutional error, no reasonable fact finder would  
6 have found the applicant guilty of the underlying offense.

7 The 2023 prosecution effectively amounted to a retrial after a motion for a new  
8 trial. However, the crucial distinction here is that the "motion for a new trial" was initiated  
9 by the prosecution, not the defense.

10 In a surprising turn of events, Petitioner was acquitted.

11 Petitioner's subsequent acquittal of the same offense based on same evidence raises  
12 a profound question concerning the constitutionality of her prior conviction: How can a  
13 defendant be acquitted for the same offense, based on identical evidence, after having  
14 been previously convicted?

15 Petitioner's acquittal in 2023 serves as a potent testament to the inherent problems  
16 and constitutional violations in her initial conviction in 2021. There is no confidence in  
17 the integrity of Petitioner's 2021 conviction.

18 After the acquittal, Petitioner filed two requests for records but the trial court  
19 denied her second request. CF 139-144. Petitioner did not show any lack of diligence.

20 **B. Discovery is Essential and Requires Appointment of Counsel**

21 Habeas is an important safeguard whose goal is to correct real and obvious wrongs.  
22 Unlike ordinary civil actions, discovery in habeas corpus requires good cause. *Bracy v.*  
23 *Gramley*, 520 U.S. 899, 904, 117 S.Ct. 1793, 1797 (1997). A party seeking discovery  
24 should demonstrate specific facts indicating that the sought discovery may well advance  
25 the party's cause. "Advancing the cause" means that the discovery must advance the  
26 requestor's knowledge on the issues pertinent to cognizable habeas corpus issues. Good  
27 cause is shown "where specific allegations before the court show reason to believe that the  
28 petitioner may, if the facts are fully developed, be able to demonstrate that he is . . .

entitled to relief." *Bracy*, 520 U.S. at 908-09 (citing *Harris v. Nelson*, 394 U.S. 287 (1969)). "[A] district court abuse[s] its discretion in not ordering Rule 6(a) discovery when discovery [i]s 'essential' for the habeas petitioner to 'develop fully' his underlying claim." *Smith v. Mahoney*, 611 F.3d 978, 997 (9th Cir. 2010) (alterations in original) (internal quotation marks omitted) (quoting *Pham v. Terhune*, 400 F.3d 740, 743 (9th Cir. 2005)).

	Case No. 19CM06724	Case No. 23CM00067
Prosecuting agency	Orange County District Attorney (ECF 3 at 79-80)	Orange County District Attorney (CF 30-31)
Allegations on complaint	Intentionally, knowingly, and unlawfully violated a protective order by failing to deactivate website and created new websites (ECF 3 at 79-80)	Willfully and unlawfully disobeyed the terms of a court order by failing to remove any pictures or references of the protected party from any social media websites or blogs she may have posted (CF 30-31)
Underlying domestic violence restraining order case number	Case No. <b>18V002374</b> filed in Orange County Superior Court (ECF 3 at 82-84)	Case No. <b>18V002374</b> filed in Orange County Superior Court (CF 30-31)
Terms of the court order alleged being violated	Remove content on the Internet relating to video, pictures, blogs, or websites about Tomas Czodor created by Ms. Luo. (ECF 4 at 120)	Remove any pictures or references of the protected party from any social media websites or blogs she may have posted (CF 30-31, 35)
Domestic violence accuser	Tomas Czodor (ECF 4 at 28)	Tomas Czodor (CF 13)

1 2 3	Prosecution evidence	Online contents posted in 2018 (ECF 4 at 39-50)	Online contents posted in 2018 (CF 39, 82-94)
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4 Essentially, Case No. 23CM00067 constitutes a new trial of the same matters  
5 addressed in Case No. 19CM06724. The actions of defense counsel at trial in 2023, as  
6 well as the decisions made by the trial court in 2023, both reflected by clerk's transcript  
7 and reporter's transcript of the 2023 prosecution, serve as pivotal evidence of how  
8 Petitioner's constitutional rights were seriously infringed upon in Case 19CM06724.

9 The discovery of the clerk's transcript and reporter's transcript of Case No.  
10 23CM00067 is of paramount constitutional importance in the adjudication of the habeas  
11 corpus petition pertaining to Case No. 19CM06724. The pursuit of justice and the  
12 preservation of constitutional protections demand a thorough examination of these  
13 transcripts, as they may hold the key to rectifying any past injustices and ensuring the fair  
14 and equitable treatment of Petitioner. The transcripts of case no. 23CM00067 are  
15 "essential" for Petitioner to "develop fully" her claims.

16 Whenever the United States magistrate judge or the court determines that the  
17 interests of justice so require, representation may be provided for any financially eligible  
18 person who is seeking relief under section 2241, 2254, or 2255 of title 28. 18 U.S.C. §  
19 3006A(a)(2)(B).

20 The interests of justice require the appointment of counsel if an evidentiary hearing  
21 on the habeas petition is needed, or if a party may conduct discovery and the appointment  
22 of counsel is "necessary for effective discovery." Rules Governing Section 2254 and 2255  
23 Cases, Rules 8(c) and 6(a).

24 After Petitioner's acquittal, Case No. 23CM00067 is currently placed under seal  
25 upon the request of DOJ. See [https://www.occourts.org/online-services/case-  
26 access/criminal-traffic-cases](https://www.occourts.org/online-services/case-access/criminal-traffic-cases) (No case no. 23CM00067 is available for public access.) No  
27 trial transcript of case no. 23CM00067 can be ordered. See  
28 <https://www.occourts.org/online-services/court-reporter-transcript-requests>

1 The effective retrieval of transcripts of a sealed case (whether to use subpoena),  
2 understanding their legal significance, and using them to support Petitioner's claims  
3 demand a high level of legal expertise. An appointed counsel is best equipped to navigate  
4 these complexities, ensuring that Petitioner's rights are diligently protected.

5 **IV. CONCLUSION**

6 In a gross manner, Petitioner's constitutional rights were violated from the very  
7 beginning to the end. Petitioner was be put on trial without the aid of counsel in any real  
8 sense, and convicted upon incompetent evidence, or evidence irrelevant to the issue or  
9 otherwise inadmissible.

10 For the reasons stated above, Petitioner has shown good cause and the court should  
11 permit expanding record and discovery of the clerk's transcript and reporter's transcript of  
12 Case No. 23CM00067. The interests of justice require this court to appoint competent  
13 counsel for Petitioner.

14  
15 Dated: October 15, 2023

16 Respectfully submitted.

17  
18 /s/ XINGFEI LUO

19 XINGFEI LUO

20 Petitioner in Pro Se  
21  
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28



**DECLARATION OF XINGFEI LUO**

I, XINGFEI LUO, declare and state:

1. I am the petitioner in this petition. I have personal knowledge of all facts stated herein. If called as a witness, I could and would competently testify thereto.

2. After the trial court denied my request for records of Case No. **23CM00067** on July 24, 2023 I immediately requested the case files from my court appointed counsel. However, my counsel was unable to provide the case files until August 27, 2023 because she was out of the country. A true and correct copy of the correspondence is attached hereto as Exhibit 1. A true and correct copy of the 23CM00067 case file is attached hereto as Exhibit 2. Subsequently, I have been diligently compiling exhibits, conducting legal research, and readying a new state habeas petition under my own mistaken belief that I could not expand the record in the instant federal habeas case without first presenting the evidence to state court. While I was preparing a new habeas petition to state court I came across cases involving expanding record in federal habeas cases.

3. I am currently receiving food stamps. I have no financial means to obtain clerk's transcript and reporter's transcript of Case No.: **23CM00067** that may cost hundreds of dollars or even more.

4. The pro se clinic does not provide assistance in criminal matters. It offers no legal advice or evaluation of case merits, and it does not offer support with legal strategy. Its assistance is confined to explaining court forms and federal rules of civil procedure.

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed in Los Angeles, CA on October 15, 2023.

/s/ XINGFEI LUO



**CERTIFICATE OF SERVICE**

I declare that I electronically filed the foregoing with the United States District Court, Central District of California. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

In addition, I electronically served the foregoing to the following email address:

[michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov)

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on October 15, 2023

/s/ XINGFEI LUO

XINGFEI LUO, In Pro Per

## EXHIBIT 1



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## 23CM00067 Case Filings

**From:** "Mikhail, Marian" <Marian.Mikhail@ocaltdef.com>  
**To:** "CPRArq@mail.com" <CPRArq@mail.com>  
**Date:** Aug 27, 2023 4:25:21 PM

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Please find attached your case filings and minutes.

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CONFIDENTIAL EMAIL: The information contained in this email is confidential and may also be attorney-client privileged and constitute attorney work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify sender immediately.

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### Attachments

- Minutes\_23CM00067.pdf
- Amended Complaint\_23CM00067.pdf
- Complaint\_23CM00067.pdf
- Court Advisement Prior to Trial\_23CM00067.pdf
- Court Jury Instructions.pdf
- Court Order Shortening Time\_23CM00067.pdf
- Court's Proposed Jury Instructions.pdf
- DA Opposition to Double Jeopardy Motion\_23CM00067.pdf
- Defense Discovery Request\_23CM00067.pdf
- Defense Motion in limine\_23CM00067.pdf
- Defense Motion to Dismiss Double Jeopardy\_23CM00067.pdf
- Defense Motion to Dismiss\_First Amendment\_23CM00067.pdf
- Motion to Dismiss\_Insufficient Pleading\_23CM00067.pdf
- Order Shortening Time Double Jeopardy Motion\_23CM00067.pdf
- Prosecution Motion in limine.pdf
- Prosecution's Proposed Jury Instructions.pdf

## EXHIBIT 2

## Case Summary

Case Number:	23CM00067
OC Pay Number:	11200090
Originating Court:	Central
Defendant:	Luo, Xingfei
Demographics:	
Sex:	Female
Eyes:	Brown
Hair:	Black
Height(ft/in) :	5'5"
Weight (lbs):	96
Race:	Asian
Address:	10628 Hallwood Drive Temple City, CA 91780

**Identifiers:**


**Names:**

	Last Name	First Name	Middle Name	Type	Date of Birth
	Luo	Xingfei		Real Name	
	Lou	Xingfei		Alias	

**Case Status:**

Status:	Closed
Case Stage:	
Release Status:	
Warrant:	N
DMV Hold :	N
Charging Document:	Complaint
Mandatory Appearance:	Y
Owner's Resp:	N
Amendment #:	1
DA Case #:	22C07939
DR #:	22-09260

**Counts:**

	Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date
	1	0	04/20/2022	166(a)(4) PC	M	Contempt of court - disobey court order	NOT GUILTY	02/10/2023	Found Not Guilty by Jury	03/28/2023

**Professionals:**

	Role	Badge	Agency	Name	Vacation Start	Vacation End
	Alternate Defender		ALTD	Deputy Alternate Defender,		
	District Attorney		OCDA	Nguyen-McDonald, Daniel		
	Alternate Defender		ALTD	Mikhail, Marian		
	District Attorney		OCDA	Gomez, Steven		
	District Attorney		OCDA	Voge, James		
	District Attorney		OCDA	Ellis, Therese		
	Alternate Defender		ALTD	Follett, James		
	District Attorney		OCDA	Johnson, Alexis		
	District Attorney		OCDA	Zhan, MingMing		

**Other Cases:**

	Case	Case Status	Violation Date
	19CM06724	Appeal	09/07/2018
	M-19285	Habeas Corpus Petition	
	M-20069	Habeas Corpus Petition	

**Heard Hearings:**

	Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
	02/07/2023	Motion Dismissal	C47	Heard	
	02/07/2023	Motion Dismissal	C48	Heard	
	02/08/2023	Motion Dismissal	C48	Heard	Waives arraignment today
	02/10/2023	Arraignment -	C48	Heard	

	02/24/2023	Arraignment -	C54	Cancel	
	03/03/2023	Pre Trial -	C47	Cancel	
	03/03/2023	Pre Trial -	C50	Heard	Time not waived
	03/10/2023	Pre Trial -	C47	Cancel	
	03/10/2023	Pre Trial -	C51	Heard	waives statutory time for
	03/16/2023	Jury Trial -	C47	Heard	
	03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Cancel	
	03/20/2023	Jury Trial -	C47	Heard	
	03/20/2023	Motion Dismiss [Penal Code 1385]	C47	Heard	
	03/20/2023	Motion Dismiss [Penal Code 1385]	C53	Heard	
	03/21/2023	Motion Dismissal	C47	Cancel	
	03/21/2023	Jury Trial -	C47	Heard	
	03/22/2023	Jury Trial -	C47	Heard	
	03/22/2023	Jury Trial -	C53	Heard	waives statutory time for
	03/23/2023	Jury Trial -	C53	Heard	waives statutory time for
	03/24/2023	Jury Trial -	C53	Heard	waives statutory time for
	03/27/2023	Jury Trial -	C53	Heard	waives statutory time for
	03/28/2023	Jury Trial -	C53	Heard	
	07/24/2023	Chambers Work -	C56	Heard	

**Register of Actions:**

Date Action	Seq Nbr	Docket Code	Text
12/30/2022	1	FLDOC	Original Complaint filed on 12/30/2022 by Orange County District Attorney.
	2	FLNAM	Name filed: Luo, Xingfei
	3	FLCNT	MISDEMEANOR charge of 273.6(a) PC filed as count 1. Date of violation: 04/20/2022.
	4	CLADD	At the request of People, case calendared on 02/24/2023 at 08:30 AM in C54 for ARGN.
	5	FI959	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.
	7	FIFCI	Arraignment Letter filed.
	8	FIBWCPO	Body Worn Camera Protective Order filed.
01/25/2023	1	FIMTN2	Defense Notice of Motion; Motion to Dismiss Pursuant to U.S. and C.A. Due Process for Insufficient Notice or Pleading; Or in the Alternative, Pursuant to Penal Code Section 1004 filed.
	2	CLCST2	Motion re: Dismissal set on 02/07/2023 at 08:30 AM in Department C47.
02/07/2023	1	HHELD	Hearing held on 02/07/2023 at 08:30:00 AM in Department C47 for Motion Dismissal.
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA	Clerk: M. Diaz
	4	OFBAL	Bailiff: F. Ramirez
	5	APDDA	People represented by Steven Gomez, Deputy District Attorney, present.
	6	APTXT	Alternate Defender appointed based on prior representation on case 19CM06724 which is currently on appeal
	7	APDAL	Court appoints Alternate Defender to represent Defendant.
	8	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.
	10	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).
	11	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	12	TRPDR	Case called. People answer ready. Defense answers ready.
	13	CLRSN2	Motion re: Dismissal reassigned for 02/07/2023 at 11:15 AM in Department C48, Gregg L. Prickett Judge, 30 minute time estimate.
	14	CLTXT	all parties to report forthwith to C48
	15	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.
	16	TEXT	Release status to be addressed on the scheduled arraignment date of 2/24/23
	17	OFMCD	Minutes entered by C. Shenkman on 02/07/2023.
	18	HHELD	Hearing held on 02/07/2023 at 11:15:00 AM in Department C48 for Motion Dismissal.
	19	OFJUD	Judicial Officer: Gregg L. Prickett, Judge
	20	OFJA	Clerk: K. Barnstein
	21	OFBAL	Bailiff: J. L. Mc Million
	22	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.
	23	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).
	24	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.
	25	CLSET2	Motion re: Dismissal trailed to 02/08/2023 at 10:00 AM in Department C48.
	26	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.
02/08/2023	1	HHELD	Hearing held on 02/08/2023 at 10:00:00 AM in Department C48 for Motion Dismissal.
	2	OFJUD	Judicial Officer: Gregg L. Prickett, Judge
	3	OFJA	Clerk: K. Barnstein
	4	OFBAL	Bailiff: T. Barron
	5	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.
	6	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).
	7	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.

	8	FIAMD	First Amended Complaint filed by Orange County District Attorney.
	9	CTAMC	To the First Amended Complaint count 1 now reads 166(a)(4) PC, MISDEMEANOR. Date of violation: 04/20/2022.
	10	WVRAT	Defendant waives the right to be arraigned today.
	11	CLSET	Arraignment set on 02/10/2023 at 08:30 AM in Department C48.
	12	CLTRM	Arraignment for 02/24/2023 08:30 AM in C54 to remain.
02/10/2023	1	HHELD	Hearing held on 02/10/2023 at 08:30:00 AM in Department C48 for Arraignment.
	2	OFJUD	Judicial Officer: Gregg L. Prickett, Judge
	3	OFJA	Clerk: K. Barnstein
	4	OFBAL	Bailiff: J. L. Mc Million
	5	APDWAL	Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
	6	APDDA	People represented by James Voge, Deputy District Attorney, present.
	7	CPCDD	Copy of First Amended Complaint given to defense counsel.
	8	WVRAA	Defendant waives reading and advisement of the First Amended Complaint.
	9	PLNGA	To the First Amended Complaint defendant pleads NOT GUILTY to all counts.
	10	MORES	Defense reserves all motions.
	11	DFSFC	Defendant invokes state, federal and constitutional rights.
	12	DFIRD	Informal request for discovery made by Defense.
	13	CLSET	Pre Trial set on 03/03/2023 at 09:00 AM in Department C47.
	14	DFOTR	Defendant ordered to physically appear.
	15	CLSET	Jury Trial set on 03/16/2023 at 09:00 AM in Department C47.
	16	CLVAC	Arraignment vacated for 02/24/2023 at 08:30 AM in C54. (Entered NUNC_PRO_TUNC on 02/23/23)
	17	DFOTR	Defendant ordered to physically appear.
	18	DSROR	Court orders defendant released on own recognizance.
	19	COBWCA	Court orders the Body Worn Camera Protective Order filed on 12/30/2022 approved, issued and in full effect.
02/15/2023	1	FITXT	Request for Discovery filed.
02/23/2023	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 02/10/2023.
03/01/2023	1	CLTRF	Calendar Line for PT transferred from C47 on 03/03/2023 at 09:00 AM to C50 on 03/03/2023 at 09:00 AM.
03/03/2023	1	HHELD	Hearing held on 03/03/2023 at 09:00:00 AM in Department C50 for Pre Trial.
	2	OFJUD	Judicial Officer: William Scott Zidbeck, Judge
	3	OFJA	Clerk: V. Barragan
	4	OFBAL	Bailiff: C. Herrera
	5	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	6	APDDA	People represented by Steven Gomez, Deputy District Attorney, present.
	7	APDWAL	Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
	8	FICON	Request for Continuance - Misdemeanor filed.
	9	CLCON	Pre Trial continued to 03/10/2023 at 08:30 AM in Department C47 by stipulation of all parties.
	10	TEXT	Court authorizes 977 appearance.
	11	CLTRM	Jury Trial for 03/16/2023 09:00 AM in C47 to remain.
	12	DFOTR	Defendant ordered to appear.
	13	WVNW	Defendant does not waive statutory time for Jury Trial.
	14	DSOCN	Defendant's release on own recognizance continued.
	15	TXKPW	Keep with companion cases(s) 19CM06724.
	16	OFMCD	Minutes entered by H. Gomez on 03/03/2023.
03/08/2023	1	CLTRF	Calendar Line for PT transferred from C47 on 03/10/2023 at 08:30 AM to C51 on 03/10/2023 at 08:30 AM.
03/10/2023	1	HHELD	Hearing held on 03/10/2023 at 08:30:00 AM in Department C51 for Pre Trial.
	2	OFJUD	Judicial Officer: Stephen J. McGreevy, Judge
	3	OFJA	Clerk: E. Flores
	4	OFBAL	Bailiff: A. Gonzales
	5	APDDA	People represented by Alexis Johnson, Deputy District Attorney, present.
	6	APNDC	Defendant not present in Court represented by Marian Mikhail, Alternate Defender.
	7	TEXT	Although Judge McGreevy believes he can and will be impartial in this matter, to comply with this requirement, Court discloses the following: Judge McGreevy was elected to the Orange County Superior Court in June of 2022. Before taking the bench, Judge McGreevy worked as a prosecutor in the Orange County District Attorney's office for 25 years. When Judge McGreevy left the OCDA's office, his job title was Assistant District Attorney in charge of the Homicide Unit. For 9 months he was an Assistant District Attorney in the Gang Unit. Prior to being an Assistant District Attorney, Judge McGreevy worked as a Senior Deputy District Attorney in the Homicide Unit and the Sexual Assault Unit.
	8	FICON	Request for Continuance - Misdemeanor filed.
	9	CLTRM	Jury Trial for 03/16/2023 09:00 AM in C47 to remain.
	10	TEXT	Defendant is ordered to appear unless advised by defense counsel that matter will be continued.
	11	DSOCN	Defendant's release on own recognizance continued.
	12	TXKPW	Keep with companion cases(s) 19CM06724.
03/14/2023	1	FIMTN2	Defense Notice of Motion; Motion to Dismiss in Violation of Double Jeopardy Under the California and US Constitutions; Penal Code Section 654; and In the Interest of Justice Under Penal Code Section 1385 filed.
	2	TXRNF	Request and Order Shortening Time received, not filed.
	3	CLCST2	Motion re: Dismissal set on 03/21/2023 at 08:30 AM in Department C47.
03/16/2023	1	HHELD	Hearing held on 03/16/2023 at 09:00:00 AM in Department C47 for Jury Trial.

	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge #1892
	3	OFJA	Clerk: C. Shenkman
	4	OFBAL	Bailiff: F. Ramirez
	5	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	6	APDDA	People represented by Therese Ellis, Deputy District Attorney, present.
	7	APDWAL	Defendant present in Court with counsel Marian Mikhail, Alternate Defender.
	8	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	9	CORAC	Court read and considered Request and Order Shortening Time.
	10	MOTBY	Motion by Defense to shorten time for Motion to Dismiss in Violation of Double Jeopardy
	11	MOTION	Motion argued.
	12	MOTION	Motion granted.
	13	MOPEO	Objection by the People.
	14	TEXT	Defense requests to set Motion and Jury Trial on 3/21/23 if Court grants shortening of time. Request was denied. (Entered NUNC_PRO_TUNC on 03/17/23)
	16	TRPDR	Case called. People answer ready. Defense answers not ready.
	19	CLSET2	Motion re: Dismiss [Penal Code 1385] set on 03/20/2023 at 08:30 AM in Department C47. (Entered NUNC_PRO_TUNC on 03/17/23)
	21	CLSET	Jury Trial trailed to 03/20/2023 at 08:30 AM in Department C47.
	22	DFOTR	Defendant ordered to appear.
	23	CLTXT	Day 45 is 3/27/23
	24	DSOCN	Defendant's release on own recognizance continued.
	25	TXKPW	Keep with companion cases(s) 19CM06724.
	26	OFMDD	Minutes of 03/16/2023 entered on 03/17/2023.
03/17/2023	1	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
	2	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
	3	NUNCPT	Nunc Pro Tunc entry(s) made on this date for 03/16/2023.
03/20/2023	1	FITXT	People's Opposition to Defense Omnibus Motion to Dismiss filed.
	2	HHELD	Hearing held on 03/20/2023 at 08:30:00 AM in Department C47 for Motion Dismiss [Penal Code 1385].
	3	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	4	OFJA	Clerk: M. Diaz
	5	OFBAL	Bailiff: F. Ramirez
	6	OFMCD	Minutes entered by C. Shenkman on 03/20/2023.
	7	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.
	8	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	9	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	10	TEXT	As to the Motion:
	11	TRPDR	Case called. People answer ready. Defense answers ready.
	12	CLRSN2	Motion re: Dismiss [Penal Code 1385] reassigned for 03/20/2023 at 10:30 AM in Department C53, H. Shaina Colover Judge, 30 minute estimate.
	13	CLTXT	All parties to report forthwith
	14	CLTRM	Jury Trial for 03/20/2023 08:30 AM in C47 to remain.
	15	DSOCN	Defendant's release on own recognizance continued.
	16	HHELD	Hearing held on 03/20/2023 at 10:30:00 AM in Department C53 for Motion Dismiss [Penal Code 1385].
	17	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	18	OFJA	Clerk: M. Ruiz
	19	OFBAL	Bailiff: S. Garcia
	20	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	21	TRIOC	In open court at 10:11 AM
	22	APDDA	People represented by Daniel Nguyen-McDonald, Deputy District Attorney, present.
	23	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	24	CORAC	Court read and considered Motion to Dismiss, Request, Order for Shortening time and People's Opposition.
	25	MOTION	Motion argued.
	26	TRALP2	Again in open court at 01:51 PM. Defendant present with counsel. People duly represented.
	27	TRTXT	Defense resumes argument on Motion to Dismiss.
	28	MOTION	Motion denied.
	29	TEXT	Court states ruling is for all and without prejudice. - reasons as stated on the record.
	30	FIORD	Order Shortening Time signed and filed.
	31	CLTRM	Jury Trial for 03/20/2023 08:30 AM in C47 to remain.
	32	DFOTR	Defendant ordered to appear.
	33	DSOCN	Defendant's release on own recognizance continued.
	35	HHELD	Hearing held on 03/20/2023 at 08:30 AM in Department C47 for Jury Trial.
	36	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	37	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.



	38	TRPDR	Case called. People answer ready. Defense answers not ready. #1893
	39	MOTBY	Oral motion by Defense to trail the matter to 03/22/2023.
	40	TEXT	People state there are potential witness availability issues and request to have the matter trail day by day.
	41	MOTION	Motion argued.
	42	TEXT	Parties are heard as to discovery issues.
	43	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	44	TEXT	Court memorialized the proceedings thus far this afternoon.
	45	TEXT	Further argument as to potential discovery issues is heard.
	46	TEXT	Defense motion to trail the matter to 03/22/2023 is denied.
	47	CLTXT	Upon the Court's own motion:
	48	CLSET	Jury Trial trailed to 03/21/2023 at 01:30 PM in Department C47.
	49	DFOTR	Defendant ordered to appear.
	50	CLTXT	Day 39 of 45.
	51	DSOCN	Defendant's release on own recognizance continued.
	52	TXKPW	Keep with companion cases(s) 19CM06724.
	53	OFMCD	Minutes entered by M. Diaz on 03/20/2023.
03/21/2023	1	HHELD	Hearing held on 03/21/2023 at 01:30:00 PM in Department C47 for Jury Trial.
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA	Clerk: C. Shenkman
	4	OFBAL	Bailiff: F. Ramirez
	5	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	6	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	7	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	8	TRPDR	Case called. People answer ready. Defense answers not ready.
	9	CLSET	Jury Trial trailed to 03/22/2023 at 08:30 AM in Department C47.
	10	TEXT	Jury trial trailed at request of defense
	11	DFOTR	Defendant ordered to appear.
	12	CLTXT	day 40 of 45
	13	DSOCN	Defendant's release on own recognizance continued.
	14	TXKPW	Keep with companion cases(s) 19CM06724.
03/22/2023	1	HHELD	Hearing held on 03/22/2023 at 08:30:00 AM in Department C47 for Jury Trial.
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA	Clerk: C. Shenkman
	4	OFBAL	Bailiff: F. Ramirez
	5	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	6	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	7	ADSCD	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Cynthia M Herrera, Judge in court.
	8	TRPDR	Case called. People answer ready. Defense answers ready.
	9	CLRSN	Jury Trial reassigned for 03/22/2023 at 09:30 AM in Department C53, Judge H. Shaina Colover, 4 day time estimate.
	10	CLTXT	Parties ordered to report forthwith.
	11	TXKPW	Keep with companion cases(s) 19CM06724.
	12	OFMCD	Minutes entered by M. Diaz on 03/22/2023.
	13	HHELD	Hearing held on 03/22/2023 at 09:30:00 AM in Department C53 for Jury Trial.
	14	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	15	OFJA	Clerk: M. Ruiz
	16	OFBAL	Bailiff: S. Garcia
	17	FIMTN	People Motion Pursuant to Evidence Code 402 filed.
	18	FIMTN	Defense Motion Pursuant to Evidence Code 402 filed.
	19	TRCBR	At 10:09 AM, Court and Counsel confer in chambers without court monitor present.
	20	TRTXT	Chamber conference concludes at 11:19 AM.
	21	TRTXT	The Court directs the clerk to order a panel of 40 prospective jurors for this date at 1:30 PM.
	22	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	23	TRIOC	In open court at 11:34 AM
	24	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	25	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	26	TRPDR	Case called. People answer ready. Defense answers ready.
	27	FITXT	Court Advisement and Trial Stipulations Department C53 filed.
	28	TRTXT	The Court has provided a copy of Trial and Jury Selection Department C53 to counsel.
	30	TRTXT	Court memorializes previous chambers conference taken at 9:43 AM.
	31	TRTXT	The Court reviewed People's potential exhibit list.
	32	TRTXT	All parties are present and ready to proceed with 402 Evidence Code motions as follows:
	33	TRTXT	The Court now hears the Peoples 402 Motions in Limine.

34	CLTXT	Peoples Motion in Limine Number One (1). #1894
35	MOTBY	Motion by People to exclude questions regarding the Legality of Detention, Searches, or Miranda Advisements
36	MOTION	Motion argued.
37	TRTXT	Court grants motion as modified on the record.
38	CLTXT	Peoples Motion in Limine Number Two (2).
39	MOTBY	Motion by People to exclude questions and mentioning regarding double jeopardy and the legalityof the charge.
40	TRTXT	No objection by the Defense.
41	MOTION	Motion granted.
42	CLTXT	Peoples Motion in Limine Number Three (3).
43	MOTBY	Oral motion by People to exclude questions and mentioning regarding the restitution amount ordered for the victim Mr. Czodor in 19CM06724
44	MOTION	Motion granted.
45	CLTXT	Peoples Motion in Limine Number Four (4).
46	MOTBY	Motion by People to exclude reference to the ultimate impact of the jury verdict on defendant and her family and any evidence to garner sympathy.
47	MOTION	Motion granted.
48	CLTXT	Peoples Motion in Limine Number Five (5).
49	MOXWG	Motion by People to exclude all witnesses from the courtroom granted.
50	CLTXT	Peoples Motion in Limine Number Six (6).
51	MOTBY	Motion by People to exclude testimonial evidence from defendant's witnesses
52	TRTXT	No objection by the Defense.
53	MOTION	Motion granted.
54	CLTXT	Peoples Motion in Limine Number Seven (7).
55	MOTBY	Motion by People to excludc arguments violating the "Golden Rule."
56	TRTXT	No objection by the Defense.
57	MOTION	Motion granted.
58	CLTXT	Peoples Motion in Limine Number Eight (8).
59	MOTBY	Motion by People to exclude all references to a mistrial, prosecutorial misconduct or error, 1118 motions, Wheeler motions, alleged discovery violations, or similarly inflammatory objections and motions in the presence of the jury
60	TRTXT	No objection by the Defense.
61	TRTXT	Court grants motion as modified on the record.
62	CLTXT	Peoples Motion in Limine Number Nine (9).
63	MOTBY	Motion by People to request Discovery Under Penal Code 1054.3
64	TRTXT	No objection by the Defense.
65	MOTION	Motion granted.
66	CLTXT	Peoples Motion in Limine Number Ten (10).
67	MOTBY	Motion by People to request defense to disclose any defense exhibits or transcripts prior to introducing them to the Jury
68	TRTXT	Court grants motion as modified on the record.
69	CLTXT	Peoples Motion in Limine Number Eleven (11).
70	MOTBY	Motion by People to admit prior statments of defendant when offered against the defendant
71	MOTION	Motion argued.
72	TRTXT	Court will rule after jury selection.
73	CLTXT	Peoples Motion in Limine Number Twelve (12).
74	MOTBY	Motion by People to exclude prior statments of the defendant when offered by the defense
75	TRTXT	Court will rule after jury selection.
76	CLTXT	Peoples Motion in Limine Number Thirteen (13).
77	MOTBY	Motion by People to admit (1) Certified Restraining Orders issued in 18V002374 and (2) Minute Order from July 29, 21 through judicial notice
78	TRTXT	Court will rule after jury selection.
79	CLTXT	Peoples Motion in Limine Number Fourteen (14).
80	MOTBY	Motion by People to introduce other acts of domestic violence evidence pursuant to evidence code section 1109
81	TRTXT	Court will rule after jury selection.
82	CLTXT	Peoples Motion in Limine Number Fifteen (15).
83	MOTBY	Motion by People to exclude questions and mentioning regarding the following arrests and/or conviction of Mr. Czodor: (a) 7/27/08 arrest of CA B&P 7028(a) (arrest relief granted per 851.93PC) (b) 5/29/08 conviction of CA B&P 7028(a) a misdemeanor in 08NM05806 (c) 10/17/08 arrest of VC31 (Dismissed in the interest of justice) (d) 7/15/10 conviction of CA B&P 7028(a), 7027.1 (a), and 16240 as misdemeanors in 09CF3055
84	MOTION	Motion granted.
85	TRTXT	The Court now hears the Defense 402 Motions in Limine.
86	CLTXT	Defense Motion in Limine Number One (1A).
87	MOXWG	Motion by Defense to exclude all witnesses from the courtroom granted.
88	CLTXT	Defense Motion in Limine Number One (1B).
89	MOTBY	Motion by Defense to admonish all witnesses not to communicate with one another during the course of trial on matters regarding this case. Motion to advise the prosecutor to inform prosecution witnesses not to communicate with one another during the course of the trial on matters regarding the case.
90	MONOB	No objection by People.
91	MOTION	Motion granted.
92	CLTXT	Defense Motion in Limine Number One (1C).

93	MOTBY	Motion by Defense for each objection posed during trial to be deemed a continuing objection to the admission of the proffered evidence #1895
94	MONOB	No objection by People.
95	MOTION	Motion granted.
96	CLTXT	Defense Motion in Limine Number One (1D).
97	MOTBY	Motion by Defense to order that all parties refrain from referring to the Office of the District Attorney by "the people."
98	MOTION	Motion denied.
99	TRTXT	Reasons as stated on the record.
100	CLTXT	Defense Motion in Limine Number One (1E).
101	MOTBY	Motion by Defense to order the prosecutor to refrain from referring to Defense Counsel as the Public Defender or an employee of Orange County. Order the Prosecutor to instruct all his witnesses to do the same.
102	MONOB	No objection by People.
103	MOTION	Motion granted.
104	CLTXT	Defense Motion in Limine Number One (1F).
105	MOTBY	Motion by People to have the entire jury trial recorded, including all discussions that are made outside the presence of the Jury.
106	MONOB	No objection by People.
107	MOTION	Motion granted.
108	CLTXT	Defense Motion in Limine Number One (1G).
109	MOTBY	Motion by People to order the Deputy District Attorney to refrain from making any comment insinuation, or statement at any time during the trial of this matter with respect to the defendant's assertion of the defendant's right to remain silent or failure to testify
110	MONOB	No objection by People.
111	MOTION	Motion granted.
112	CLTXT	Defense Motion in Limine Number Two (2).
113	MOTBY	Motion by Defense to preclude the prosecution from attempting to amend the complaint
114	TRTXT	Court grants motion. Court will rule in accordance with the law- reasons as stated on the record.
115	CLTXT	Defense Motion in Limine Number Three (3).
116	MOTBY	Motion by Defense requests that the prosecutionh disclose any and all exculpatory and impeachment evidence as required by BRADY and its progeny
117	MONOB	No objection by People.
118	MOTION	Motion granted.
119	CLTXT	Defense Motion in Limine Number Four (4).
120	MOTBY	Motion by Defense for prosecution to provide defense with copies of any photos, exhibits, transcripts, or real evidence it intends to use
121	MONOB	No objection by People.
122	MOTION	Motion granted.
123	CLTXT	Defense Motion in Limine Number Five (5).
124	MOTBY	Motion by Defense to exclude all witnesses not properly disclosed under penal code 1054.1
125	MONOB	No objection by Defense.
126	MOTION	Motion granted.
127	CLTXT	Defense Motion in Limine Number Six (6).
128	MOTBY	Motion by Defense to prohibit prosecution witnesses from commenting on the veracity of other witness testimony
129	MONOB	No objection by People.
130	MOTION	Motion granted.
131	CLTXT	Defense Motion in Limine Number Seven (7).
132	MOTBY	Motion by Defense order the prosecution to disclose all information it intends to use to impeach the defendant
133	MOTION	Motion granted.
135	CLTXT	Defense Motion in Limine Number Eight (8).
136	MOTBY	Motion by Defense to require the Deputy District Attorney to disclose oral statements made to the prosecutores office before or during trial by witnesses, including law enforcement witnesses.
137	TRTXT	Court will rule after jury selection.
138	CLTXT	Defense Motion in Limine Number Nine (9).
139	MOTBY	Motion by Defense requests that all objections be federalized
140	TRTXT	Court will rule after jury selection.
141	CLTXT	Defense Motion in Limine Number Ten (10).
142	MOTBY	Motion by Defense requets the court preclude Ms. Luo's statements before the family court
143	TRTXT	Court will rule after jury selection.
144	CLTXT	Defense Motion in Limine Number Eleven (11).
145	MOTBY	Oral motion by Defense moves to preclude any discussions of the events of the 19CM case
146	TRTXT	Court will rule after jury selection.
147	CLTXT	Defense Motion in Limine Number Twelve (12).
148	MOTBY	Motion by Defense moves to preclude any use by the prosecution of Ms. Luo's 19CM conviction to establish the element of control over the alleged postings
149	TRTXT	Court will rule after jury selection.
151	CLTXT	Defense Motion in Limine Number Thirteen (13).
152	MOTBY	Motion by Defense to preclude any acts of prior conduct pursuant to evidence code section 1101(b).
153	MOTION	Motion denied.
155	CLTXT	Defense Motion in Limine Number Fourteen (14).

156	MOTBY	Motion by Defense objects to any reference to Ms. Luo's criminal history, including any open cases
157	TRTXT	Court will rule after jury selection.
158	CLTXT	Defense Motion in Limine Number Fifteen (15).
159	MOTBY	Motion by Defense prohibit the prosecutors from making "community caretaker" arguments in closing
161	MONOB	No objection by People.
162	MOTION	Motion granted.
163	CLTXT	Defense Motion in Limine Number Sixteen (16).
164	MOTBY	Motion by Defense order the prosecution to refrain from referring to Tomas Czodor as a victim in this case
166	TRTXT	Court grants motion as modified on the record only as to "alleged victim."
167	CLTXT	Defense Motion in Limine Number Seventeen (17).
168	MOTBY	Motion by Defense order the prosecution to refrain from discussing different sentencing options or any form of punishment in the presence of the Jury
169	MOTION	Motion granted.
170	CLTXT	Defense Motion in Limine Number Eighteen (18).
171	MOTBY	Motion by Defense order the prosecution to not trivialize the reasonable doubt standard
172	TRTXT	Court grants motion as modified on the record.
174	CLTXT	Defense Motion in Limine Number Nineteen (19).
175	MOTBY	Motion by Defense order voir dire to comport with code civil procedure section 225(b) and not engage in improper questioning or priming
176	MOTION	Motion granted.
178	CLTXT	Defense Motion in Limine Number Twenty (20).
179	MOTBY	Motion by Defense order the prosecution, the court, and court staff to refrain from referring to Ms. Luo by anything, except for her name, particularly "The Defendant, " in the presence of the Jury
180	MOTION	Motion denied.
182	CLTXT	Defense Motion in Limine Number Twenty One (21)
183	MOTBY	Motion by Defense order that the parties admonish their witnesses of any in limine rulings limiting their testimony
184	MOTION	Motion granted.
186	CLTXT	Defense Motion in Limine Number Twenty Two (22)
187	MOTBY	Motion by Defense order that all in limine rulings remain in full force and effect for the duration of the trial
188	MOTION	Motion granted.
190	CLTXT	Defense Motion in Limine Number Twenty Three (23)
191	MOTBY	Motion by Defense reserve remaining motions in limine to be argued orally
192	MOTION	Motion granted.
194	TRTXT	Both parties agree and do not object to any of each other's remaining 402 motions to be ruled on after jury selection.
195	TRREC	At 12:18 PM, court declared a recess.
196	TRCBR	At 01:48 PM, Court and Counsel confer in chambers without court monitor present.
197	TRTXT	Chamber conference concludes at 2:08 PM.
198	TRALP2	Again in open court at 02:09 PM. Defendant present with counsel. People duly represented. Jury is not present.
200	TRTXT	The Court memorializes previous chambers conference taken at 1:48 PM.
201	TRTXT	Discussions held as to First Amended Complaint and charges and how the court will read it to the prospective jurors.
202	TRREC	At 02:19 PM, court declared a recess.
203	TRTXT	At 2:19 PM, prospective jurors present in the hallway outside Department C53. Roll call taken by Deputy S. Gacia and Clerk M. Ruiz, and the prospective jurors were assigned a juror number.
204	TRTXT	Off the record discussions held.
205	TRTXT	At 2:30 PM, prospective jurors enter courtroom.
206	TRIOC	In open court at 02:35 PM
207	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
208	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
209	CLTME	Time estimate: 4 days.
210	TRTXT	Court and Counsel are proceeding on First Amended Complaint.
211	TRJSE	Roll call having been taken, prospective jurors were sworn for examination.
212	TRTXT	At 2:35 PM, Judge Colover enters courtroom.
213	TRPJP	Prospective jurors are present and in their proper places.
214	TRJEX	Prospective juror(s) called by the clerk to fill the jury box.
215	TRTXT	The Court welcomes the prospective jurors.
216	TRTXT	People and Defense introduce themselves to prospective jurors.
217	TRTXT	People read potential witness list to prospective jurors.
218	TRTXT	The Court inquired of prospective jurors to determine if anyone recognized any of the parties or potential witnesses related to this case. Court heard no response from the prospective jurors.
219	TRTXT	The Court introduces court staff to prospective jurors.
220	TRTXT	Court advised jurors regarding time estimate and trial scheduling.
221	TRJAP	Court read First Amended Complaint to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
222	TRTXT	The Court addressed prospective jurors and inquires of any deferrals and hardship. (Pre-paid personal trips). There is no response to this inquiry.
223	TRTXT	The Court addressed prospective jurors and inquires of any deferrals and hardship. (Medical Appointments) Prospective juror number 115 in the audience addressed the court and court and inquires. Court excuses prospective juror 115 based on statements made about a medical appointment.
		The Court addressed prospective jurors and inquires of any deferrals and hardship. (Caregivers).The Court addressed prospective juror 123 in

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	224	TRTXT	the audience and inquires. Prospective juror remains seated in the audience.
	225	TRTXT	The Court addressed prospective jurors and inquires of any extreme financial hardship. There is no response to this inquiry.
	226	TRTXT	The Court inquires of prospective jurors if anyone is not an Orange County resident. There is no response to this inquiry.
	227	TRTXT	The Court inquires of prospective jurors seated in the jury box of prior jury service.
	228	TRTXT	The Court read CALCRIM 103 to the prospective jurors.
	229	TRTXT	The Court inquire of prospective jurors and asked if they can all be fair and unbiased in this case. There is no response.
	230	TRTXT	Prospective juror 137 in seat 6 addressed the court and judge inquires. Prospective juror remains seated in seat 6.
	231	TRVDE	Voir Dire examination commenced.
	232	TRAPJ	At 03:41 PM, Court admonishes prospective jurors and declares a recess.
	233	TRTXT	Prospective jurors approached the bailiff during recess. Deputy informed the court and counsel as to prospective juror #128 not feeling well. Counsel stipulates to excuse prospective juror #128. Deputy S. Garcia instructed to excuse prospective juror #128 and direct him to the Jury Assembly Room.
	234	TRALP2	Again in open court at 03:57 PM. Defendant present with counsel. People duly represented. Jury is not present.
	235	TRTXT	Court was informed by the Prosecutor that prospective juror 129 approached the Prosecutor during recess and was asked a question about scheduling. Defense Counsel was a witness to the conversation. Discussions held and parties agree to keep prospective juror 129 in seat 14. Reasons stated on record.
	236	TRREC	At 03:59 PM, court declared a recess.
	237	TRALP	Again in open court at 04:00 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
	238	TRTXT	Court admonished jurors as to speaking to counsel during recess.
	239	TRVDE	Voir Dire examination resumed.
	240	TRTXT	Jurors are resealed in the jury box.
	241	TRVDE	Voir Dire examination resumed.
	242	TRTXT	Clerk calls one (1) prospective jurors to the jury box.
	243	TRVDE	Voir Dire examination resumed.
	244	TRCBR	At 04:37 PM, Court and Counsel confer at side bar with court monitor present.
	245	TRTXT	Oral Motion by Defense to challenge for cause prospective juror number 133 in seat 2 was heard. People object. Argument heard and considered. Motion denied.
	246	TRTXT	Oral Motion by Defense to challenge for cause prospective juror number 138 in seat 2 was heard. Motion granted.
	247	TRTXT	Defense counsel requests prospective juror number 131 in seat 3 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 131.
	248	TRTXT	People requests prospective juror number 105 in seat 14 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 105.
	249	TRTXT	Defense counsel requests prospective juror number 137 in seat 6 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 137.
	250	TRTXT	People requests prospective juror number 129 in seat 13 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 129.
	251	TRALP	Again in open court at 04:49 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
	252	OFBAL	Bailiff: N. Calcules
	253	TRJXC	Court excused 1 prospective juror(s) for cause.
	254	TRTXT	Clerk calls one (1) prospective jurors to the jury box.
	255	TRVDE	Voir Dire examination resumed.
	256	TRTXT	The Court addressed prospective juror number 123 in audience and inquires of her concern and hardship. (Caregiver). The court excuses prospective juror number 123 for hardship.
	257	TRRTD	At 05:00 PM, Court admonished prospective jurors and declared a recess to reconvene on 03/23/2023 at 09:00 AM in Department C53 for Jury Trial.
	258	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	259	TRTXT	Discussions held as to prospective juror number 109 in seat 18.
	260	TRREC	At 05:12 PM, court declared a recess.
03/23/2023	1	HHELD	Hearing held on 03/23/2023 at 09:00:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRTXT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
	6	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	7	TRIOC	In open court at 09:16 AM
	8	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	9	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	10	FITXT	People's Proposed Jury Instructions. filed.
	11	FIMTN	Defense Motion to Dismiss (PC1385) filed.
	12	TRREC	At 09:21 AM, court declared a recess.
	13	TRTXT	Off the record discussions held.
	14	TRALP2	Again in open court at 09:22 AM. Defendant present with counsel. People duly represented. Jury is not present.
	15	TRTXT	Court memorializes previous off the record discussions held this morning.
	16	TRTXT	Discussions held by both parties as to People v. Gonzalez, 12 Cal. 4th 804 (1996).
	17	TRREC	At 09:29 AM, court declared a recess.
	18	TRTXT	At 9:30 AM prospective jurors enter courtroom.



19	TRIOC	In open court at 09:31 AM #:1898
20	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
21	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
22	TRPJP	Prospective jurors are present and in their proper places.
23	TRJXC	Court excused 1 prospective juror(s) for cause.
24	TRTXT	Clerk calls one (1) prospective jurors to the jury box.
25	TRVDE	Voir Dire examination resumed.
26	TRTXT	Voir Dire of prospective jurors conducted by the Defense.
27	TRTXT	The Court read CALCRIM 224 to the prospective jurors.
28	TRTXT	Voir Dire of prospective jurors conducted by the People.
29	TRAPJ	At 10:27 AM, Court admonishes prospective jurors and declares a recess.
30	TRALP2	Again in open court at 10:40 AM. Defendant present with counsel. People duly represented. Jury is not present.
31	TRTXT	Motion by Defense to excuse prospective juror number 133 seated in seat 2 for cause. Argument heard and considered. Motion granted.
32	TRTXT	Motion by the People to excuse prospective juror number 131 seated in seat 3 for cause. Argument heard and considered. Motion granted.
33	TRTXT	Motion by Defense to excuse prospective juror number 107 seated in seat 4 for cause. Argument heard and considered. Motion granted.
34	TRTXT	Motion by the People to excuse prospective juror number 137 seated in seat 6 for cause. Defense does not object. Motion granted.
35	TRTXT	Defense counsel requests prospective juror number 119 in seat 1 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 119 in seat 1.
36	TRTXT	Motion by the People to excuse prospective juror number 103 seated in seat 8 for cause. Argument heard and considered. Motion granted.
37	TRTXT	Defense counsel requests prospective juror number 110 in seat 10 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 110 in seat 10.
38	TRTXT	Both parties stipulate to excuse prospective juror number 129 in seat 3 for cause. Motion granted.
39	TRTXT	Motion by Defense to excuse prospective juror number 105 seated in seat 14 for cause. Argument heard and considered. Motion granted.
40	TRTXT	Both parties stipulate to excuse prospective juror number 127 in seat 17 for cause. Motion granted.
41	TRTXT	Defense counsel requests prospective juror number 100 in seat 15 to be excused for cause. The court finds no basis to excuse for cause, juror will remain. Motion Denied as to Juror number 100 in seat 15.
42	TRJYA	People accepted the jury as presently constituted.
43	TRPEC	Peremptory challenge exercised by Defense prospective juror number 119 in seat 1.
44	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 119 pursuant to Code of Civil Procedure 231.7.
45	MOTION	Motion argued.
46	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record
47	TRJYA	People accepted the jury as presently constituted.
48	TRPEC	Peremptory challenge exercised by Defense prospective juror number 116 in seat 7.
49	TRJYA	People accepted the jury as presently constituted.
51	TRPEC	Peremptory challenge exercised by Defense prospective juror number 100 in seat 15.
52	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 100 pursuant to Code of Civil Procedure 231.7.
53	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.
54	TRJYA	People accepted the jury as presently constituted.
55	TRPEC	Peremptory challenge exercised by Defense prospective juror number 112 in seat 18.
56	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 112 pursuant to Code of Civil Procedure 231.7.
57	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.
58	TRALP	Again in open court at 11:40 AM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
59	TRTXT	Court thanked and excused prospective jurors.
60	TRTXT	The Court excuses the following prospective jurors 119, 116, 100 and 112 - Peremptory challenges exercised by the Defense.
61	TRJXC	Court excused 8 prospective juror(s) for cause.
62	TRTXT	Jurors are resealed in the jury box.
63	TRTXT	Clerk calls twelve (12) prospective jurors to the jury box.
64	TRVDE	Voir Dire examination resumed.
65	TRAPJ	At 12:00 PM, Court admonishes prospective jurors and declares a recess.
66	TROPJ	Proceedings held outside the presence and hearing of the jurors.
67	TRTXT	Scheduling discussions held.
69	TRALP	Again in open court at 01:52 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
70	TRVDE	Voir Dire examination resumed.
71	TRJAP	Court read First Amended Complaint to the prospective jurors and advised them of the defendant's plea of not guilty thereto.
72	TRJXC	Court excused 1 prospective juror(s) for cause.
73	TRTXT	Jurors are resealed in the jury box.
74	TRTXT	Clerk calls one (1) prospective juror to the jury box.
75	TRVDE	Voir Dire examination resumed.
76	TRTXT	Voir Dire of prospective jurors conducted by the Defense.
77	TRTXT	Voir Dire of prospective jurors conducted by the People.
78	TRAPJ	At 03:04 PM, Court admonishes prospective jurors and declares a recess.

	79	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	80	TRTXT	Both parties stipulate to excuse prospective juror number 104 in seat 14 for cause. Motion granted
	81	TRTXT	Motion by Defense to excuse prospective juror number 114 seated in seat 6 for cause. Motion granted.
	82	TRTXT	Both parties stipulate to excuse prospective juror number 110 in seat 10 for cause. Motion granted.
	83	TRJYA	People accepted the jury as presently constituted.
	84	TRPEC	Peremptory challenge exercised by Defense prospective juror number 134 in seat 8.
	85	TRPECO	Objection by People, outside the presence of the jury to peremptory challenge of prospective juror # 134 pursuant to Code of Civil Procedure 231.7.
	86	TRTXT	Both parties stipulate to excuse prospective juror number 121 in seat 15 for cause. Motion granted.
	87	TRJYA	Both sides accepted the jury as presently constituted.
	88	TRREC	At 03:35 PM, court declared a recess.
	89	TRALP2	Again in open court at 03:46 PM. Defendant present with counsel. People duly represented. Jury is not present.
	90	CORAC	Court read and considered applicable law.
	91	FDPECO	Court overrules objection to the improper exercise of a peremptory challenge by People pursuant to Code of Civil Procedure 231.7 and for the following reason(s): reasons as stated on the record.
	92	TRREC	At 04:11 PM, court declared a recess.
	93	TRALP	Again in open court at 04:12 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
	94	TRJXC	Court excused 4 prospective juror(s) for cause.
	95	TRTXT	The Court excuses prospective jurors 134 in seat 8 - Peremptory challenges exercised by the Defense.
	96	TRTXT	Jurors are reseated in the jury box.
	97	TRTXT	The Court inquires of the prospective jurors in the jury box if there are any last-minute concerns before they are sworn in as jurors to hear this case. No concerns are expressed.
	98	TRTXT	Clerk calls four (4) prospective juror to the jury box.
	99	TRVDA	Voir Dire examination for alternates commences.
	100	TRCBR	At 04:29 PM, Court and Counsel confer at side bar with court monitor present.
	101	TRTXT	Counsel stipulate to the following prospective jurors as the 2 alternate jurors as follows: Prospective Juror number 118 as Alternate Juror number one (1). Prospective Juror number 135 as Alternate Juror number two (2).
	102	TRALP	Again in open court at 04:32 PM, Defendant present with counsel. People duly represented. Prospective jurors present in their proper places.
	103	TRTXT	Court inquires of alternate jurors before being sworn in as jurors in this case.
	104	TRJGB	Court thanked and excused remaining prospective jurors to Jury Assembly Room.
	105	TRIOC	In open court at 04:33 PM
	106	TRJCS	12 Jurors and 2 Alternates were sworn by the clerk to hear this matter. Disposition of panel jurors is reported on the random list and included by reference.
	107	TRRTD	At 04:36 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/24/2023 at 10:00 AM in Department C53 for Jury Trial.
	108	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	109	TRTXT	Discussions held as to pending 402 Motions in Limine.
	110	TRTXT	People object to Motion to Dismiss filed earlier this date.
	111	MOTION	Motion argued.
	112	TRTXT	Defense states he didn't intended to file motion but rather wanted to file more of a brief rather than the motion to dismiss.
	113	DFOTR	Defendant ordered to appear.
	114	DSOCN	Defendant's release on own recognizance continued.
	115	TXKPW	Keep with companion cases(s) 19CM06724.
	116	TRREC	At 04:54 PM, court declared a recess.
03/24/2023	1	HHELD	Hearing held on 03/24/2023 at 10:00:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	6	TRIOC	In open court at 09:51 AM
	7	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	8	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	9	CORAC	Court read and considered Transcript for the initial Temporary Restraining Order dated 10/19/18.
	10	TRTXT	Court and counsel resume 402 E.C. motions pending ruling as follows:
	11	CLTXT	Peoples Motion in Limine Number Eleven (11).
	12	MOTBY	Motion by People to admit prior statements of defendant when offered against the defendant
	13	MOTION	Motion argued.
	14	MOTION	Motion granted.
	15	TRTXT	As stated on the record.
	16	CLTXT	Peoples Motion in Limine Number Twelve (12).
	17	MOTBY	Motion by People to exclude prior statements of the defendant when offered by the defense
	18	TRTXT	Motion granted in accordance with the law. Reasons as stated on the record.
	19	CLTXT	Peoples Motion in Limine Number Thirteen (13).
	20	MOTBY	Motion by People to admit (1) certified restraining order issued in 18V002374 and (2) minute order from July 29, 21 through judicial notice
	21	MOTION	Motion argued.
	22	TRTXT	Court grants motion as modified on the record. Reasons as stated on the record.

23	CLTXT	Peoples Motion in Limine Number Fourteen (14). #1900
24	MOTBY	Motion by People to introduce other acts of domestic violence evidence pursuant to evidence code section 1109
25	MOTION	Motion argued.
27	TRTXT	Court grants motion as modified on the record. Reasons as stated on the record.
28	COJNT	Court takes judicial notice of Minute Order 7/29/21 as to counts 2 and 3.
29	TRTXT	Court now hears defense pending 402 E.C. motions.
30	CLTXT	Defense Motion in Limine Number Eight (8).
31	MOTBY	Motion by Defense to require the Deputy District Attorney to disclose oral statements made to the prosecutor's office before or during trial by witnesses, including law enforcement witnesses.
32	MOTION	Motion argued.
33	TRTXT	Court grants motion and will rule in accordance with the law- reasons as stated on the record.
34	CLTXT	Defense Motion in Limine Number Nine (9).
35	MOTBY	Motion by Defense requests that all objections be federalized
36	TRTXT	Court will rule in accordance with the law- reasons as stated on the record.
37	CLTXT	Defense Motion in Limine Number Ten (10).
38	TRTXT	Court will rule in accordance with People's Eleven (11)- reasons as stated on the record.
39	CLTXT	Defense Motion in Limine Number Eleven (11).
40	TRTXT	Court will rule in accordance with People's Twelve (12)- reasons as stated on the record.
41	CLTXT	Defense Motion in Limine Number Twelve (12).
42	MOTBY	Motion by Defense moves to preclude any use by the prosecution of Ms. Lou's 19CM conviction to establish the element of control over the alleged postings
43	MOTION	Motion argued.
44	TRTXT	Court grants motion as modified on the record.
45	CLTXT	Defense Motion in Limine Number Thirteen (13).
46	MOTBY	Motion by Defense to preclude any acts of prior conduct pursuant to evidence code section 1101(b).
47	MOTION	Motion denied.
48	CLTXT	Defense Motion in Limine Number Fourteen (14).
49	MOTBY	Motion by Defense objects to any reference to Ms. Lou's past criminal history, including any open cases
50	TRTXT	Court will rule in accordance with People's Fourteen (14)- reasons as stated on the record.
51	CLTXT	Defense Motion in Limine Number Twenty Four (24).
52	MOTBY	Oral motion by Defense request that the court not allow the mention of conversation between previous defense counsel and detective Ruvalcaba as to the defendant's 5th Amendment Right.
53	MOTION	Motion granted.
54	TRREC	At 11:30 AM, court declared a recess.
55	TRTXT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
56	TRIOC	In open court at 11:38 AM
57	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
58	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
59	TRPJP	Sworn jurors are present and in their proper places.
60	TRTXT	The Court reads Pre-Trial Cal Crim 100 series to the Jury.
61	TRTXT	The Court reads Cal Crim Jury Instruction regarding Presumption of Innocence and the People's Burden of Proof to the prospective jurors.
62	TRTXT	The Court advises the jurors as to the process of opening statements.
63	TROSB	Opening statement by People given.
64	TROSB	Opening statement by Defense given.
65	TRTXT	Court read Cal Crim 124- Separation Admonition to the sworn jury.
66	TRREC	At 12:00 PM, court admonished jurors and declared a recess.
67	TRALP	Again in open court at 01:45 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
68	TRWST	Witness, Brenda Ruvalcaba, Investigator with Santa Ana Police Department, sworn and testified.
69	TRCBR	At 01:54 PM, Court and Counsel confer at side bar with court monitor present.
70	TRTXT	Discussions held as to direct examination of witness and the word "victim" being used on direct. As stated on the record.
71	TRWRT	Brenda Ruvalcaba, previously sworn, resumes testimony.
72	STRHRG	Start of Exhibit List: for exhibit management purposes.
73	TREXI	People's Exhibit # 1 ( Document(s) )- DV-130 Restraining Order After Hearing. Case Number 18V002374- filed 10/1/21 marked for identification.
74	MOTBY	Oral motion by People to admit People's Exhibit 1 into evidence
75	MOTION	Motion granted.
76	TREXE	People's Exhibit # 1 received into evidence.
77	TREXI	People's Exhibit # 2 ( Document(s) )- Multiple page document dated 3/21/23 titled gorgeouspainting with various color copy photographs of a male, and copies of text messages marked for identification.
78	TREXS	Court orders People's Exhibit # 2 sealed.
79	TRCBR	At 02:18 PM, Court and Counsel confer at side bar with court monitor present.
80	TRALP	Again in open court at 02:22 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
81	TRWRT	Brenda Ruvalcaba, previously sworn, resumes testimony.
82	TREXI	People's Exhibit # 2A ( Document(s) )- Multiple page document dated 3/21/23 titled gorgeouspainting with various color copy photographs of a male, and copies of text messages with redacted portions marked for identification.
83	MOTBY	Oral motion by People to admit People's Exhibit 2A into evidence



	84	MOTION	Motion granted. #1901
	85	TREXE	People's Exhibit # 2A received into evidence.
	86	TREXI	People's Exhibit # 3 ( Document(s) )- YouTube website B Ph @pph7278 No videos Tomas Czodor marked for identification.
	87	TREXS	Court orders People's Exhibit # 3 sealed.
	88	TREXI	People's Exhibit # 3A ( Document(s) )- YouTube website B Ph @pph7278 No videos Tomas Czodor- redacted copy marked for identification.
	89	MOTBY	Oral motion by People to admit People's Exhibit 3A into evidence
	90	MOTION	Motion granted.
	91	TREXE	People's Exhibit # 3A received into evidence.
	92	TRTXT	Cross examination conducted on behalf of the Defense..
	93	MOTBY	Oral motion by People to admit People's Exhibit 3A into evidence.
	94	MOTION	Motion granted.
	95	TRCBR	At 02:41 PM, Court and Counsel confer at side bar with court monitor present.
	96	TRTXT	Discussions held as to Defense inquiry of a YOUTUBE link.
	97	TRALP	Again in open court at 02:43 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	98	TRTXT	Cross examination resumes.
	99	TRTXT	Re-direct conducted on behalf of the People.
	100	TRREC	At 02:58 PM, court admonished jurors and declared a recess.
	101	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	102	TRREC	At 03:08 PM, court declared a recess.
	103	TRTXT	Juror number 108 in seat 11 approached the bailiff during recess. Deputy informs the court and counsel that he indicated the court and counsel were speaking too fast and could like to know if it's okay to ask questions or to repeat if they can't hear or understand the proceedings.
	104	TRALP	Again in open court at 03:21 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	105	TRTXT	Court addressed the jury and advised them to raise their hand if they need anything repeated.
	106	TRTXT	Re-direct resumes on behalf of the People.
	107	TRTXT	Re-cross on behalf of the Defense.
	108	TRCBR	At 03:28 PM, Court and Counsel confer at side bar with court monitor present.
	109	TRTXT	Discussions held as to statements made by the witness on re-cross.
	110	TRALP	Again in open court at 03:31 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	111	TRTXT	Re-cross on behalf of the defense resumes.
	112	TRWER	Brenda Ruvalcaba excused subject to recall.
	113	TRRTD	At 03:45 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/27/2023 at 09:15 AM in Department C53 for Jury Trial.
	114	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	115	TRTXT	Discussions held as to jury instructions.
	116	DFOTR	Defendant ordered to return.
	117	DSOCN	Defendant's release on own recognizance continued.
	118	TRREC	At 03:52 PM, court declared a recess.
	119	TXKPW	Keep with companion cases(s) 19CM06724.
03/27/2023	1	HHELD	Hearing held on 03/27/2023 at 09:15:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRTXT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
	6	TRPRT	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	7	TRIOC	In open court at 09:38 AM
	8	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	9	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	10	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	11	FITXT	Proposed Jury Instruction submitted by the Defense filed.
	12	FITXT	Proposed Jury Instructions filed.
	13	TRRJI	Court and Counsel review jury instructions with court monitor present.
	14	TRREC	At 09:49 AM, court declared a recess.
	15	TRTXT	Sworn jurors enter courtroom at 9:49 AM.
	16	TRIOC	In open court at 09:50 AM
	17	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	18	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	19	TRPJP	Sworn jurors are present and in their proper places.
	20	TRWST	Witness, Tomas Czodor, victim, sworn and testified.
	21	TRWID	Witness identified the defendant.
	22	TREXI	People's Exhibit # 4 ( Document(s) )- DV-130 Restraining Order 18V002374 marked for identification.
	23	MOTBY	Oral motion by People to admit People's 4 into evidence.
	24	MOTION	Motion granted.
	25	TREXE	People's Exhibit # 4 received into evidence.
	26	COJNT	Court takes judicial notice of case 19CM06724.

	27	COJNT	Court takes judicial notice of prior convictions. #1902
	28	TRCBR	At 10:29 AM, Court and Counsel confer at side bar with court monitor present.
	29	TRTXT	Discussions held as to prior conviction/charges and requests court admonish the sworn jurors.
	30	TRALP	Again in open court at 10:32 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	31	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
	32	TRREC	At 10:47 AM, court admonished jurors and declared a recess.
	33	TRALP	Again in open court at 11:04 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	34	TRTXT	Cross examination conducted on behalf of the Defense.
	35	TRCBR	At 11:11 AM, Court and Counsel confer at side bar with court monitor present.
	36	TRTXT	Discussions held regarding legal definition/witness opinion.
	37	TRALP	Again in open court at 11:19 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	38	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
	39	TRCBR	At 11:20 AM, Court and Counsel confer at side bar with court monitor present.
	40	TRTXT	Discussion held as to defendant's marital status/352 issue- Court will allow limited inquiry.
	41	TRALP	Again in open court at 11:25 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	42	TRWRT	Tomas Czodor, previously sworn, resumes testimony.
	43	TRTXT	Re-direct conducted by the People.
	44	TRTXT	Re-cross by the Defense.
	45	TRWER	Tomas Czodor excused subject to recall.
	46	TRCBR	At 11:53 AM, Court and Counsel confer at side bar with court monitor present.
	47	TRTXT	Discussions held as to scheduling.
	48	TRALP	Again in open court at 11:54 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	49	TRPRS	People rest(s)
	50	TRREC	At 11:56 AM, court admonished jurors and declared a recess.
	51	TROPJ	Proceedings held outside the presence and hearing of the jurors.
	52	TRTXT	Scheduling discussions.
	53	CORAC	Court read and considered proposed jury instruction of Lawful Issuance of the Order.
	54	TRREC	At 12:00 PM, court declared a recess.
	55	TRTXT	Informal off the record discussions on jury instructions held.
	56	TRIOC	In open court at 01:55 PM
	57	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	58	APNDC	Defendant not present in Court represented by James Follett, Alternate Defender.
	59	WV977	Defendant's appearance is waived pursuant to Penal Code 977(a).
	60	TRRJI	Court and Counsel review jury instructions with court monitor present.
	61	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	62	MOTBY	Oral motion by Defense pursuant to 1118. PC
	63	MOTION	Motion argued.
	64	MOTDD	Defense motion pursuant to Penal Code 1118 denied.
	65	TRTXT	Reasons as stated on the record.
	66	TRREC	At 03:21 PM, court declared a recess.
	67	TRALP2	Again in open court at 03:45 PM. Defendant present with counsel. People duly represented. Jury is not present.
	68	TRRJI	Court and Counsel review jury instructions with court monitor present.
	69	TRTXT	Court addressed defendant with regards to testifying.
	70	ADVISE	Defendant advised of the following:
	71	WVRMS	- The right to remain silent.
	72	WVRTF	- The right to testify in own defense.
	73	WVRTT	- The right not to testify, be called as a witness, or admit guilt.
	74	FIGJI	Jury Instructions Withdrawn filed.
	75	TRREC	At 03:51 PM, court declared a recess.
	76	TRALP	Again in open court at 03:53 PM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
	77	TRDRS	Defense rests.
	78	TRCRI	The Court read the Instructions to the Jury.
	79	FIGJI	Jury Instructions Given filed.
	80	TRRTD	At 04:18 PM, Court admonished sworn jurors and declared a recess to reconvene on 03/28/2023 at 09:15 AM in Department C53 for Jury Trial.
	81	DFOTR	Defendant ordered to return.
	82	TRTXT	Parties agree that tomorrow both will present closing arguments and People will present rebuttal.
	83	DSOCN	Defendant's release on own recognizance continued.
	84	TXKPW	Keep with companion cases(s) 19CM06724.
03/28/2023	1	HHELD	Hearing held on 03/28/2023 at 09:15:00 AM in Department C53 for Jury Trial.
	2	OFJUD	Judicial Officer: H. Shaina Colover, Judge
	3	OFJA	Clerk: M. Ruiz
	4	OFBAL	Bailiff: S. Garcia
	5	TRTXT	Prior to jurors being present in the courtroom, roll call took place in the public hallway by Deputy S. Garcia.
	6	TRTXT	Sworn jurors enter courtroom at 9:34 AM.

	7	TRPRT	Proceedings recorded electronically. The recording system is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
	8	TRIOC	In open court at 09:34 AM
	9	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	10	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	11	TRPJP	Sworn jurors are present and in their proper places.
	12	TRCLA	Closing argument presented on behalf of the People.
	13	TRCLA	Closing argument presented on behalf of the Defense.
	14	TRRBA	Rebuttal argument presented on behalf of the People.
	15	TRTXT	Court reads CAL CRIM 3550 to sworn jury.
	16	FITXT	Clean copy of Jury Instructions Given filed.
	17	TRJRT	At 11:09 AM, the Jury retired to the jury room to deliberate in charge of Deputy S. Garcia duly sworn for that purpose.
	18	TRAOC	Court admonishes alternate juror(s) and pursuant to stipulation of counsel releases the alternate(s) on one hour call.
	19	TRAJR	Counsel stipulates that the alternate juror(s) may go home or to work. The Court admonishes the alternate juror(s) and releases them subject to their remaining in telephone contact with the bailiff for the duration of the jury's deliberation.
	20	TRTXT	Alternate jurors need not remain in the courtroom during deliberations but will be subject to telephonic recall as needed.
	21	TRTXT	Following submission of the case to the jury, counsel will be available by phone and will return to the courtroom within 30 minutes of being called.
	22	TRJBR	At 11:50 AM, jurors left the jury room for lunch recess.
	23	TRJRD	At 01:34 PM, jurors returned to the jury room to resume deliberations.
	24	TRTXT	Question Number One (1).
	25	TRWRJ	At 02:05 PM, the jury submitted the following written request: "We, the jury in the above entitled action request the following: -Copy of transcript Mr. Czodor was requested to read from DA: Def. -List of websites Mr. Czodor alleges were created by Def. -Addt'l copies of Exhibits, /s/Juror # 113, Foreperson." Counsel were notified. Request filed and incorporated herein by reference.
	26	TRIOC	In open court at 02:25 PM
	27	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	28	APNDC	Defendant not present in Court represented by James Follett, Alternate Defender.
	29	TRTXT	Discussions held as to Question 1 submitted by the sworn jurors.
	30	TRREC	At 02:33 PM, court declared a recess.
	31	FITXT	Original Court's Response to Question One (1) submitted at 2:05 PM. filed.
	32	TRWRS	At 02:36 PM the following written response was sent to the jury: -as to part 1 and 2, if it was not admitted into evidence, it does not go back to the "jury deliberation room. (You can listen to playback of any portion of the trial testimony you would find helpful.)* -as to part 3 - the actual exhibits are back in the jury deliberation room already, no additional copies will be provided. *as requested the websites, please remember, you are not to look anything up online whatsoever.
	33	TRTXT	At 3:52 PM, jurors inform bailiff that the jury has reached a verdict.
	34	TRTXT	At 3:52, District Attorney MingMing Zhan & Deputy Public Alternate Defender James Follett were notified telephonically that a verdict has been reached and to report to Department C53 forthwith.
	35	TRIOC	In open court at 04:13 PM
	36	APDDA	People represented by MingMing Zhan, Deputy District Attorney, present.
	37	APDWAL	Defendant present in Court with counsel James Follett, Alternate Defender.
	38	TRTXT	All parties are ready to receive jury verdict.
	39	TRTXT	Court asks deputy to bring in the jury.
	40	TRTXT	At 4:14 PM, the Jury enters courtroom.
	41	TRPJP	Sworn jurors are present and in their proper places.
	42	TRIOC	In open court at 04:15 PM
	43	TRTXT	Court inquires who the foreperson is. Juror number 122 in seat 5 answers in the affirmative.
	44	TRTXT	The court addresses the foreperson regarding reaching of verdicts. The foreperson states they have reached verdicts. The bailiff retrieves the verdicts and finding forms and gives them to the court.
	45	TRTXT	The court received and reviewed jury verdicts and finding forms. The clerk read the following:
	46	FDJNC	VERDICT: We the jury in the above entitled action find the defendant NOT GUILTY as to count 1 as charged in the First Amended Complaint. Juror # 122, Foreperson. Verdict read, filed, and incorporated herein by reference.
	47	TRJPV	To the question, "Ladies and gentlemen of the jury are these your verdict(s)?" the jury answered in the affirmative. The jury was polled by the clerk. To the question: "Are these your verdict(s)?" each of the jurors answered individually in the affirmative. The clerk was ordered to record the verdict(s).
	48	TRTXT	Court read final jury instruction CALCRIM No. 3590 to sworn jurors on the Discharge of Jury.
	49	TRJTE	Court thanked and excused the Jury.
	50	TRJIS	Pursuant to Code of Civil Procedure 237(a)(2), all juror identifying information ordered sealed and filed.
	51	FIJIS	Packet of unfiled documents containing confidential juror information is filed and sealed pursuant to Code of Civil Procedure 237(a)(2).
	52	TRAEX	Alternate juror(s) notified by telephone and excused.
	53	TRACD	Actual days of trial: 5 days.
	54	TRTXT	Proceedings ended and all parties exit the courtroom at 4:15 PM.
	55	FITXT	Redacted Written Request from Jury filed.
	56	FITXT	Redacted verdict form count 1 filed.
	57	FITXT	Unsigned verdict form filed.
	58	ENDHRG	End of Exhibit List: for exhibit management purposes.
	59	DOJABS	DOJ Initial Abstract sent. - Validated by DOJ: Yes
03/29/2023	1	CSCLS	Case closed.
04/10/2023	1	FITXT	Defendant's Request for Record filed.

04/11/2023	1	CSCLS	Case closed. #1904
04/26/2023	1	FIDOC	Exhibit List of People filed.
04/27/2023	1	CSCLS	Case closed.
05/17/2023	1	TXRNF	Second Request and Order Produce Record received, not filed.
05/18/2023	1	CSCLS	Case closed.
05/19/2023	1	DFS851	Electronic notice has been received from the Department of Justice that relief has been GRANTED pursuant to Penal Code 851.93. Information regarding the granting of relief shall not be disclosed except to the person to whom relief was granted, or a Criminal Justice Agency as defined in Penal Code section 851.92. Case is sealed.
05/20/2023	1	CSCLS	Case closed.
06/22/2023	1	TXRFR	Case referred to C56 for review.
	2	TEXT	Second Request and Order Produce Record referred to chambers after PC 851.93 Sealing completed as this filing was originally received prior to granting of PC 851.93 sealing.
06/23/2023	1	CSCLS	Case closed.
07/24/2023	1	HHELD	Hearing held on 07/24/2023 at 09:00:00 AM in Department C56 for Chambers Work.
	2	OFJUD	Judicial Officer: Cynthia M Herrera, Judge
	3	OFJA	Clerk: M. Diaz
	4	APNAP	No appearance by parties.
	5	CORAC	Court read and considered Second Request and Order Produce Record.
	6	TEXT	Court rules as follows:
	7	TEXT	Defendant's motion for transcript to be provided at no cost to Defendant is DENIED.
07/25/2023	1	CSCLS	Case closed.
	2	CPGTO	Copy of Minute Order mailed to Defendant.
07/26/2023	1	CSCLS	Case closed.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

**ELECTRONICALLY FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

12/30/2022  
10:17 AM

DAVID H. YAMASAKI, Clerk of the Court  
**23CM00067**

THE PEOPLE OF THE STATE OF CALIFORNIA, ) COMPLAINT  
) BWC AGENCY  
Plaintiff, )  
)  
)  
vs. ) No.  
) SAPD 22-09260  
XINGFEI LUO ) DOMESTIC VIOLENCE  
F )  
AKA XINGFEI LOU )  
)  
Defendant(s))

The Orange County District Attorney charges that in Orange County, California, the law was violated as follows:

COUNT 1: On or about April 20, 2022, in violation of Section 273.6(a) of the Penal Code (VIOLATION OF A PROTECTIVE ORDER), a MISDEMEANOR, XINGFEI LUO did intentionally, knowingly, and unlawfully violate an order issued pursuant to Family Code sections 6320 and 6389 by contacting protected party through online means.

I declare under penalty of perjury, on information and belief, that the foregoing is true and correct.

Dated 12-30-2022 at Orange County, California.  
SA/CM 22C07939

TODD SPITZER, DISTRICT ATTORNEY

by: /s/ SHABNUM AZIZI

SHABNUM AZIZI, Deputy District Attorney

/

XINGFEI LUO SAPD 22-09260 PAGE 2

RESTITUTION CLAIMED

☐ None

☐ \$ \_\_\_\_\_

☒ To be determined

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

The People intend to proceed pursuant to Evidence Code sections 1101(b), 1107, 1109, and 1370.

Pursuant to Welfare & Institutions Code §827 and California Rule of Court 5.552, notice is hereby given that the People will seek a court order to disseminate the juvenile case file of the defendant/minor, if any exists, to all parties in this action, through their respective attorneys of record, in the prosecution of this case.

**FILED**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

**RECEIVED**

JAN 25 2023

JAN 25 2023

OFFICE OF THE DISTRICT ATTORNEY  
CENTRAL JUSTICE CENTER  
SANTA ANA, CA

1 FRANK DAVIS

2 Alternate Public Defender

3 Marian Mikhail

4 Deputy Alternate Defender

5 600 W. Santa Ana Blvd., Suite 600

6 Santa Ana, CA 92701

7 Fax: (714) 835-8400

8 Attorneys for Defendant

DAVID H. YAMASAKI, Clerk of the Court

BY: G. YANG, DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

*Plaintiff,*

vs.

**XINGFEI LUO,**

*Defendant.*

Case No.: 23CM00067

NOTICE OF MOTION; MOTION TO  
DISMISS PURSUANT TO U.S. AND  
C.A. DUE PROCESS FOR  
INSUFFICIENT NOTICE OR  
PLEADING; OR IN THE  
ALTERNATIVE, PURSUANT TO  
PENAL CODE SECTION 1004.

TO: ORANGE COUNTY DISTRICT ATTORNEY,

PLEASE TAKE NOTICE that on February 7, 2023, at 4:30 a.m. in Department C47 of  
the above-entitled court, Defendant will move the court for an order dismissing the complaint on the  
ground that her right to a speedy trial has been violated.

**MOTION**

The Defendant challenges the facial sufficiency of the criminal complaint, before an entry of  
plea has been submitted, and hereby moves the court for an order dismissing the complaint pursuant  
to the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 15, of the  
California Constitution, as it cannot even comply with Section 1004 of the California Penal Code.  
This motion is based on these moving papers, the court minutes, and any argument made at the  
hearing.



**MEMORANDUM OF LAW**

**I. THE FACIAL SUFFICIENCY OF A CRIMINAL COMPLAINT IS DEFICIENT WHEN IT VIOLATES DUE PROCESS AND/OR PENAL CODE SECTION 1004.**

The function of criminal pleadings is to give an accused adequate notice of the charges against him. *People v. Gallego*, 52 Cal. 3d 115 (1990); *Cole v. State of Ark.*, 333 U.S. 196 (1948); *In re Oliver*, 333 U.S. 257 (1948); *People v. Pond*, 44 Cal. 2d 665 (1955). A criminal complaint must be filed to comply with Due Process, speedy trial requirements, and statute of limitations. U.S. Const. Amend. VI and XIV; Cal. Const. Art. I, §15; Pen. Cod. §§ 799–80. *Garland v. Washington*, 232 U.S. 642 (1914) (explaining that while States have wide latitude to develop their own criminal procedures, they must still afford the accused this basic Constitutional right).

In California, statutory law also permits a defendant to also challenge the facial sufficiency of a complaint by way of demurrer under Penal Code Section 1004. *See People v. Zamora*, 18 C3d 538, 542 (1976). A demurrer challenges the defects that appear on the face of the accusatory pleading. A defendant can demur to an accusatory pleading instead of entering a plea. The only grounds allowed to be raised by demurrer are the 5 specific ones set forth in Pen. Code, § 1004:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;
2. That the accusatory pleading does not substantially conform to the provisions of Pen. Code, §§ 950, 952, and also Pen. Code, § 951 in case of an indictment or information;
3. That more than one offense is charged, except as provided in Pen. Code, § 954;
4. That the facts stated do not constitute a public offense; and
5. That the accusatory pleading contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Because the purpose of the legal accusatory instrument is to provide notice, bare literal compliance with Pen. Code, § 952 is insufficient to overcome a demurrer and faces due process



1 attack under law because pleading the words of the statute is insufficient to give constitutionally  
2 adequate notice of the offense. *See Choung v. People of State of Cal.*, 320 F. Supp. 625, 628-29  
3 (E.D. Cal. 1970) (explaining that although California permits its accusatory pleadings to be worded  
4 in the language of the statute under Penal Code Section 952, it must still survive a Due Process  
5 attack only if the language of the statute from which it is taken sets forth fully, directly, and  
6 expressly all essential elements of the crime); *see also Lott v. United States*, 309 F.2d 115 (5th Cir.  
7 1962) (“It is true that offenses must be accurately described in an indictment; and if necessary to do  
8 so, the allegations must be expanded beyond the words of the statute in order to embrace all the  
9 ingredients necessary to the offense.”).

10  
11  
12 **Therefore, “[a]n accusatory pleading must be more specific than a statute which**  
13 **defines a material element of the offense by a blanket reference to other forbidden acts.”**  
14 *Choung v. People of State of Cal.*, at 629. In *Choung*, via writ of habeas corpus, the court held a  
15 California complaint alleging violation of Penal Code Section 602.9 that was framed substantially  
16 in the terms of the statute failed a Due Process attack for its lack of specificity, ultimately failing to  
17 adequately inform the accused of the charge. *Id.* at 628-631. In *Choung*, the complaint under attack  
18 read as follows:  
19

20 That on the 22nd day of March, 1968, and within limits of the City of  
21 Sacramento, in the County of Sacramento, in the State of California  
22 the said Defendants above named did then and there, before the filing  
23 of this complaint, and within one year prior thereto, willfully and  
24 unlawfully come into a school building, to wit: Sacramento Senior  
25 High School and upon the school grounds adjacent thereto without  
26 lawful business therein or thereon and did, by the presence and acts of  
27 them and each of them interfere with the peaceful conduct of the  
28 activities of said school and did disrupt said school and its pupils and  
the activities of said school, and said Defendants and each of them did  
remain in said school building and upon said school grounds after  
being asked to leave by the chief administrative official of said  
school, to wit: ULRIC MORLEY. \* \* \*

1 The Court held “I rule that the phrase ‘without lawful business therein or thereon’ renders the  
2 complaint too vague to notify petitioner of the specific charge to be defended, in violation of the  
3 Constitution.” *Id.* at 628. The Court explained that although the purpose for which the  
4 petitioner entered the campus was a crucial element of the offense, the complaint did not explain  
5 which statute or regulation, among a potentially infinite number, the petitioner intended to violate,  
6 leaving the prosecution the prosecution free to roam at large— to shift its theory of criminality so as  
7 to take advantage of each passing vicissitude of the trial and appeal. *Id.* at 630 (citing) (*Russell v.*  
8 *United States*, 369 U.S. 749 (1962); *see also People v. Puckett*, 44 Cal. App. 3d 607 (Ct. App. 1975)  
9 (holding a person cannot be convicted of an offense not charged against him in the indictment or  
10 information, regardless of whether or not there was evidence at trial to show that the defendant  
11 committed the offense).

12  
13  
14  
15 In *Chuong*, the Court relied on examples like, in *Babb v. United States*, where the court held  
16 “that an indictment charging the defendant with transporting cattle and knowing them to have been  
17 imported ‘contrary to law’ was fatally defective for failing to allege ‘some fact or facts showing that  
18 the cattle in question were imported or brought in contrary to some law; and that it is not enough to  
19 say that they were imported or brought in ‘contrary to law.’” 218 F.2d 538 (5th Cir. 1955). *See*  
20 *also Steiner v. United States*, 229 F.2d 745 (9th Cir. 1956). The Court also relied on cases like *State*  
21 *v. Elkins*, 216 Or. 509, 339 P.2d 715 (1959), where “the Supreme Court of Oregon sustained a  
22 demurrer to an indictment, charging maintenance of an establishment where persons congregated  
23 for the purpose of ‘unlawfully’ drinking liquor on the ground that it failed to inform the defendants  
24 of the crime with which they were charged, since it did not disclose in what particular the patron's  
25 acts were contrary to statute.”  
26  
27  
28

1 Therefore, it may not be sufficient to just mirror a statute's elements, especially when a  
2 material element is alleged. To survive Due Process, the complaint must give the accused sufficient  
3 notice of what was allegedly done in order to adequately defend him/herself at trial. *Sheppard v.*  
4 *Rees*, 909 F.2d 1234 (9th Cir. 1989) (holding there was a Sixth Amendment violation that was not  
5 harmless error when a California defendant was not given adequate notice of the information, when  
6 the prosecution only alleged violation of Penal Code Section 187, murder, without making any  
7 reference in the information to felony murder or robbery as an underlying charge, ultimately  
8 affecting the defendant's ability to defend himself against such theory at trial).  
9

### 10 ARGUMENT

#### 11 **I. THE ACCUSATORY PLEADING HEREIN DOES NOT ADEQUATELY ADVISE** 12 **THE DEFENDANT OF THE CHARGES UNDER DUE PROCESS OF THE C.A.** 13 **AND U.S. CONSTITUTIONS.**

14 A fundamental principle of due process of law requires that the accused in a state or federal  
15 prosecution be informed in advance of trial of the specific charges that he must defend. First, the  
16 criminal complaint fails to provide any factual details to ascertain what *active and lawful* order was  
17 violated. Second, it fails to provide any name or identifying markers of who the protected party is in  
18 order to inform whether Ms. Luo is actually restrained from said "protected person." Third, it does  
19 not provide any factual bases to inform the accusation of how Ms. Luo acted "unlawfully,  
20 intentionally, and knowingly" in violation of the unknown order. Lastly, it fails to explain how  
21 "online means" translates into specific conduct that would result in criminal liability in Orange  
22 County, California to sustain jurisdiction. A general allegation of "contact" by "online means"  
23 provides no context or clue as to what Ms. Luo allegedly did or how Ms. Luo effectuated a violation  
24 through the World Wide Web. Without understanding what "means" were taken, Ms. Luo has not  
25  
26  
27  
28



1 been informed as to what action was taken in violation of said unknown order to effectively defend  
2 herself at trial.

3 Because the complaint provides no information as to who was harmed, under what court  
4 order, and specifically how and what “intentional, unlawful and knowingly” conduct was taken to  
5 be in violation of Penal Code Section 273.6—all of which Ms. Luo is entitled to notice of in order  
6 to defend herself at trial—the complaint cannot withstand Due Process and must be dismissed.  
7

8 **II. IN ADDITION TO DUE PROCESS, THE ACCUSATORY PLEADING HEREIN**  
9 **DOES NOT ADEQUATELY ADVISE THE DEFENDANT OF THE CHARGES**  
10 **PURSUANT TO CALIFORNIA PENAL CODE 1004(2)’S MINIMAL PLEADING**  
11 **REQUIREMENTS.**

12 Here, the criminal complaint does not even meet the bare minimum pleading requirements  
13 of Penal Code Section 1004(2). It specifically fails to comport with Penal Code Section 952. Ms.  
14 Luo is charged with Penal Code Section 273.6. Such an offense requires the prosecution to allege  
15 that:

- 16 a) a court lawfully issued a written order restraining the defendant;
- 17 b) the court order was a [protective/stay away/insert type] order,  
18 under [the code section under which the order was made];
- 19 c) the defendant knew of the court order;
- 20 d) the defendant had the ability to follow the court order; and
- 21 e) the defendant willfully/intentionally violated the order.

22  
23 See Judicial Council Of California Criminal Jury Instruction 2701.

24 As discussed in Section I of the Argument, the complaint does not even allege what lawful  
25 court order is at issue. The complaint fails to allege the type of order that is at issue. The complaint  
26 fails to allege the specific conduct that resulted in knowing and willful or intentional violation of the  
27  
28

1 order, along with the ability to follow the order. Generally allegation of “contact” by “online  
2 means” does not inform Ms. Luo of the impressible conduct that is at issue for her to defend herself  
3 at trial. For these reasons, the complaint fails under statutory law that the Court should sustain a  
4 demurrer. And even if the court were to find the pleading in compliance with Penal Code Section  
5 1004(2), it does not survive Due Process under law. *See supra*, Argument I.  
6

7 **CONCLUSION**

8 For the foregoing reasons, the Court should grant the defense’s request and dismiss the  
9 complaint against Ms. Luo under due process of law, as it fails to comply with pleading standards  
10 under the California and United States Constitution, along with minimum requirements set forth in  
11 Penal Code Section 1004.  
12

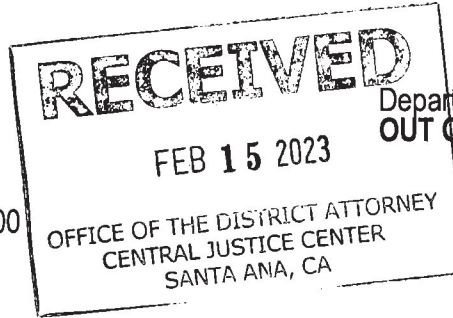
13 DATED: January 25, 2023

14 Respectfully submitted,  
15 FRANK DAVIS, Alternate Public Defender

16 

17 \_\_\_\_\_  
18 Marian Mikhail  
19 Deputy Alternate Defender  
20 Marian.mikhail@ocaltdef.com  
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Department: C47  
OUT OF CUSTODY

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

FEB 15 2023

DAVID H. YAMASAKI, Clerk of the Court

BY G. YANG DEPUTY  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CENTRAL JUSTICE CENTER**

7 PEOPLE OF THE STATE OF CALIFORNIA

8 Plaintiff,

9 v.

10 Luo, Xingfei,

11 Defendant.

Case No.: 23CM00067

**REQUEST FOR DISCOVERY**

12 **TO: ORANGE COUNTY DISTRICT ATTORNEY**

13 **PLEASE TAKE NOTICE** that Defendant is requesting pre-hearing discovery pursuant to Defendant's  
14 rights under applicable statutory law and under the state and federal Constitutions (P.L. §§ 1054.1 and 1054.4;  
15 *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378; *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244-  
16 1246). This is a continuing request: please provide any later acquired or discovered information and materials  
17 as promptly as possible.

18 Please provide all materials described below with respect to any events or circumstances to be  
19 introduced per Evidence Code §§ 1101(b), 1105, 1107, 1109, and/or 1370. Please provide all of the following  
20 items and information, in each case *regardless* of whether the People intend to use such information:

21 (1) For the period from the time the police initiated their investigation of this case until the end of that initial  
22 investigation, certified copies of (i) dispatch tapes and officer chat logs (recordings of any radio, phone, or  
23 "green channel" or other color channel communications, email/instant messaging/chat messages, or other  
24 oral or written communications among officers in the field and/or dispatch), (ii) incident log (computer history  
25 printout documenting the chronological sequence of events that occurred including times when police were  
26 called, when each officer was dispatched to and actually arrived on the scene, and when any witnesses were  
27 contacted and interviewed), (iii) computer history printout documenting all inquiries and responses to those  
28



1 inquiries (with time stamps) from the mobile data terminals or other onboard computers of each police officer  
2 and each police vehicle involved from 10 minutes prior to arrival on scene until 30 minutes after clearing the  
3 scene, and (iv) any 911 or other informant calls;

4 (2) Police, social services, and other law enforcement reports prepared in connection with the pending  
5 matter in relation to the investigation and prosecution of this case or to the Defendant or to the facts and  
6 circumstances of this case, including in each instance all ancillary and supplemental reports, all attachments,  
7 property and evidence logs and receipts, probable cause declarations, and rough or other field notes for  
8 each);

9 (3) All crime scene investigation including photographs, videos, and diagrams of crime scene, as well as  
10 all other photographs (including digital copies) of the victim, contraband or booking, and any photos, lineups  
11 or sketches shown to witnesses provided in their original state, i.e. color;

12 (4) With regard to statements of, conversations with and actions of witnesses, victims, any prior or current  
13 suspect in this case, and/or any other persons interviewed by any investigating authority in connection with  
14 the pending matter: all audio and/or video tapes or digital recordings (including stationhouse, personal DAR  
15 or other recorders, MAV/PVS/car mounted, body cameras, and all other electronic surveillance or tapings),  
16 together with notes and full disclosure of any oral communication (*People v. Campbell* (1972) 27 Cal.App.3d  
17 849; *Roland v. Superior Court* (2004) 124 Cal.App.4th 154) relating to those statements as described by or  
18 disclosed to any government agent;

19 (5) Names, current addresses, and phone numbers of all potential witnesses interviewed by any  
20 investigating authority in connection with the pending matter, regardless of whether the People intend to call  
21 any such witness (potential witnesses include government informants);

22 (6) For each such witness in this case, all records (including probation, police and other law enforcement  
23 reports, and all related supplements, attachments and notes) of citation, arrest or disposition, with respect to  
24 any known crimes or other acts (including juvenile matters) of: (i) moral turpitude, (ii) violence/assaultive  
25 behavior or weapons; or (iii) sale, possession, or use/influence of controlled substance;

26 (7) With respect to any experts **consulted** by the People, (i) a résumé including any facts upon which they  
27 may be so qualified, (ii) all reports or oral or written statements made regarding the pending matter (including  
28 the results of physical or mental examinations and results of any forensic or other scientific tests, experiments



1 or comparisons), (iii) any studies, evidence, or other materials upon which they intend to rely for their  
2 courtroom testimony, (iv) all materials they reviewed in preparation for such testimony, (v) any potentially  
3 exculpatory statements made by any potential prosecution expert witness, regardless of whether the People  
4 intend to call such expert at trial; (vi) all correspondence with such witness, including any retainer contracts or  
5 letters;

6 (8) All records **available** to the People or law enforcement (including by way of any waiver executed by the  
7 alleged victim(s)) with respect to any victim or witness toxicology, or the extent and/or value of any alleged  
8 injuries or other damages, and copies of each such waiver;

9 (9) All results of any forensic science tests (whether conducted in the field or in a lab setting) conducted  
10 by/for any agent of the People or of any law enforcement agency, including any DNA or fingerprint 'hits' and  
11 comparison materials;

12 (10) All records pertaining to forensic analysis of physical evidence and current disposition of evidence,  
13 such as copies of all chain of custody documents for each item of evidence subjected to analysis, starting  
14 with the first description or 'log entry' for each item through to the current disposition of that item of evidence  
15 (this information should include documentation which indicates where and how the materials were stored  
16 [temperature, container type], amount of evidence material which was consumed in testing, amount of  
17 material which remains, and where and how the remaining evidence is stored [temperature, container type])  
18 in and out of any police department storage facility (please include *all emails sent*);

19 (11) Access to any physical evidence relating to the pending matter;

20 (12) A summary of all efforts by the People or law enforcement to locate the Defendant or notify him of this  
21 case, and any documentation or records of such efforts (Serna packet);

22 (13) Defendant's criminal history data ('RAP Sheet' cumulative/summary criminal history and DMV driving  
23 record, complete with all data known to the People, including without limitation, any database of California or  
24 any other state or federal authority, and any internal OC District Attorney or local law enforcement database,  
25 and any police reports or investigatory reports the People may rely on for evidence of the defendant's prior  
26 bad acts);

27 (14) Exculpatory Evidence: any evidence that appears favorable to the accused, whether to guilt or to  
28 punishment (i.e., sentencing), or to credibility of material witnesses, regardless of whether or not such

evidence appears material (i.e., likely to affect the verdict). (Pen. Code §1054.1(e); *Barnett v Superior Court* (2010) 50 Cal.4th 890, 901; *People v Lewis* (2015) 240 Cal. App. 4th 257, 266.)

DATED: FEBRUARY 10, 2023

Respectfully requested,  
FRANK S. DAVIS, Alternate Public Defender



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By: Marian Mikhail  
Deputy Alternate Defender  
Attorney of Record  
Marian.mikhail@altdef.ocgov.com

1 SUPERIOR COURT OF CALIFORNIA  
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
3  
4  
5

6 THE PEOPLE OF THE STATE OF CALIFORNIA, ) COMPLAINT  
7 ) BWC AGENCY  
8 Plaintiff, ) AMENDMENT 1  
9 )  
10 vs. ) No. 23CM00067  
11 ) SAPD 22-09260  
12 XINGFEI LUO ) DOMESTIC VIOLENCE  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Defendant(s))

15 The Orange County District Attorney charges that in Orange  
16 County, California, the law was violated as follows:

17 COUNT 1: On or about April 20, 2022, in violation of Section 166  
18 (a)(4) of the Penal Code (DISOBEY COURT ORDER), a MISDEMEANOR,  
19 XINGFEI LUO did willfully and unlawfully disobey the terms of a  
20 process and court order lawfully issued on or about 10/01/21 by  
21 the Superior Court, in and for the County of Orange County,  
22 State of California, 18V002374, which lawfully ordered defendant  
23 to remove any pictures or references of the protected party from  
24 any social media websites or blogs she may have posted.

25 I declare under penalty of perjury, on information and belief,  
26 that the foregoing is true and correct.

27 Dated 02-08-2023 at Orange County, California.  
28 SA/CM 22C07939

TODD SPITZER, DISTRICT ATTORNEY

by: \_\_\_\_\_  
Deputy District Attorney

XINGFEI LUO SAPD 22-09260 PAGE 2

1  
2 RESTITUTION CLAIMED

3 [ ] None

4 [ ] \$ \_\_\_\_\_

5 [ X ] To be determined

6 NOTICES:

7 The People request that defendant and counsel disclose, within  
8 15 days, all of the materials and information described in Penal  
9 Code section 1054.3, and continue to provide any later-acquired  
10 materials and information subject to disclosure, and without  
11 further request or order.

12 The People intend to proceed pursuant to Evidence Code sections  
13 1101(b), 1107, 1109, and 1370.

14 Pursuant to Welfare & Institutions Code §827 and California Rule  
15 of Court 5.552, notice is hereby given that the People will seek  
16 a court order to disseminate the juvenile case file of the  
17 defendant/minor, if any exists, to all parties in this action,  
18 through their respective attorneys of record, in the prosecution  
19 of this case.

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

MAR 14 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

FRANK DAVIS  
Alternate Public Defender  
Marian Mikhail  
Deputy Alternate Defender  
600 W. Santa Ana Blvd., Suite 600  
Santa Ana, CA 92701  
Fax: (714) 835-8400  
*Attorneys for Defendant*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

*Plaintiff,*

vs.

**XINGFEI LUO,**

*Defendant.*

**Case No.: 23CM00067**

NOTICE OF MOTION; MOTION TO  
DISMISS IN VIOLATION OF  
DOUBLE JEOPARDY UNDER THE  
CALIFORNIA AND US  
CONSTITUTIONS; PENAL CODE  
SECTION 654; AND IN THE  
INTEREST OF JUSTICE UNDER  
PENAL CODE SECTION 1385

TO: ORANGE COUNTY DISTRICT ATTORNEY,

PLEASE TAKE NOTICE that on **MARCH 21, 2023, or sooner if the order for shortening time is granted, at 9:00 a.m. in Department C47** of the above-entitled court, Defendant will move the court for an order dismissing the complaint pursuant to double jeopardy under the U.S. and CA Constitutions; Penal Code Section 654; and in the interest of justice under Penal Code Section 1385.

**MOTION**

The Defendant hereby moves the court for an order dismissing the complaint in the above-entitled matter on the ground that her right to once in jeopardy has been violated pursuant to the 5th and Fourteenth Amendments to the U.S. Constitution, Article I, Section 15, of the California Constitution, and sections 654 and 1385 of the California Penal Code. This motion is based on these

**RECEIVED**

MAR 14 2023

OFFICE OF THE DISTRICT ATTORNEY  
CENTRAL JUSTICE CENTER  
SANTA ANA, CA

1 of 21

Defendant's Omnibus Motion to Dismiss

032



1 moving papers, Case Nos. 18V002374, 19CM06724, and 23CM00067, and any exhibits presented  
2 and argument made at the hearing.

3 **STATEMENT OF FACTS AND ATTORNEY DECLARATION**

4 The following declaration and statement of facts are based on my personal knowledge  
5 and/or information from the court management systems, case files, transcripts, discovery, and  
6 procedural history of Case Nos. 18V002374, 19CM06724, and 23CM00067.

8 According to Case No. Case No. 18V002374, on September 28, 2018, complaining witness  
9 Tomas Czodor obtained a temporary restraining order at Lamoreaux Justice Center against Ms. Luo.  
10 Tomas Czodor claimed that on September 11, 2018, Ms. Luo improperly posted information,  
11 photos, and videos about Tomas Czodor. Tomas Czodor claimed provided photos and listed  
12 websites in his petition for a restraining order, such as:  
13

14 <https://www.youtube.com/watch?v=GUWLRXEC7jo>  
15 <https://www.youtube.com/watch?v=WbIOlnVDmfA>  
16 <https://www.youtube.com/watch?v=uYebVZyYN84>  
17 <https://www.youtube.com/watch?v=gOIZigNKw2A> (and for short,youtu.be/  
18 gOIZigNKw2A)  
19 <http://www.cheaterreports.com/tomas-czodor/>  
20 <https://reportcheatingwife.com/tomas-czodor-santa-ana-orange-county-ca/>  
21 <http://www.cheaterplanet.com/category/cheaters>  
22 <https://wtfcheater.com/tomas-czodor-santa-ana-orange-county-ca/>  
23 <https://reportcheatingonline.com/tomas-czodor-santa-ana-orange-county-ca/>  
24 <http://gorgeouspainting1.blogspot.com/>  
25 <https://gorgeouspainting.wordpress.com/>

26 See Case No. 18V002374.

27 On October 19, 2018, the court conducted a hearing on the restraining order. At the hearing,  
28 in addition the exhibits submitted, Tomas Czodor testified and claimed that Ms. Luo posted online  
information about him “28 times.” The Court ultimately issued a permanent 5 year restraining  
order with an expiration for October 19, 2023.

1 The order required Ms. Luo to fully stay away from Tomas Czodor, along with an  
2 andendum stating:

3 Responding Party is ordered to cease posting the picture or likeness of  
4 the Moving Party or refer to him by name on any social media  
5 website or blog. **Responding Party is further ordered to remove**  
6 **any pictures or references of the Moving Party from any social**  
**media website or blog she may have posted.**

7 See Case No.18V002374 (emphasis added).

8 On August 6, 2019, nearly a year later, the District Attorney filed criminal charges against  
9 Ms. Luo—count 1 for vandalism of less than \$400; count 2 for disobeying a domestic relations  
10 court order for “coming within 100 yards of the protected person”; and count 3 for disorderly  
11 conduct unlawful dissemination of private photographs and recordings on or around September 18,  
12 2018. See Case No. 19CM06724. The case centered on claims Tomas Czodor made in his  
13 restraining order petition against Ms. Luo in Case No.18V002374.

14 On August 12, 2019, the Orange County Public Defender was appointed and Ms. Luo was  
15 arraigned and entered a plea of not guilty.

16 On July 26, 2021, the District Attorney amended the complaint one day prior to trial to  
17 amend the underlying conduct in count 2 of disobeying a domestic relations court order from being  
18 within 100 yards to the claim that Ms. Luo “**failed to deactivate website and created new**  
19 **websites.**”

20 On July 27, 2021, the 19CM06724 jury trial began. At trial, the the prosecution admitted  
21 into evidence testimony and exhibits of websites from 2018 that violated the family court protective  
22 order in Case No.18V002374. At trial, the prosecution admitted multiple exhibits depicting websites  
23 that were addressed in family court, including a transcript of the family court hearing on October  
24  
25  
26  
27  
28



1 19, 2018, where Tomas Czodor testified that Ms. Luo posted about him “28 times,” which included  
2 “7 cheater websites” and “10 YouTube” videos. *See* Case No. 19CM06724.

3 On July 29, 2021, the jury returned a verdict of guilty on all counts to Case No.  
4 19CM06724.  
5

6 A few months after the guilty verdict, on October 1, 2021, Lamoreaux Justice Center  
7 conducted another hearing because Ms. Luo sought to terminate the order. The family court  
8 maintained the same full stay away order and same expiration for October 19, 2023, but amended  
9 the addendum by adding a second paragraph to comport with Free Speech guarantees and  
10 protections:  
11

12 Restrained Party is further ordered to remove any pictures or  
13 references of the Protected Party from any social media websites or  
blogs she may have posted.

14 Restrained Party shall not post any pictures or likeness of the  
15 Protected Party or refer to him by name on any social media or  
16 website or blog that would be abusive pursuant to FC §6203 and  
FC§63210.

17 *See* Case No.18V002374. The language in the first paragraph—requiring Ms. Luo to  
18 remove any photos or websites she may have posted—did not change from the  
19 October 19, 2018 order.  
20

21 Shortly thereafter, on October 26, 2021, the Criminal Court set restitution in the amount of  
22 \$82,346.00 plus 10% interest per year and 10% administrative fee(s) as to count(s) 1, 2, 3 for  
23 Tomas Czodor.

24 On November 15, 2021, the Public Defender declared a conflict and the Alternate Defender  
25 was appointed.  
26  
27  
28

1 On behalf of Ms. Luo, the Alternate Defender sought to modify and challenge the restitution  
2 amount.

3 On or around November 24, 2021, the prosecution provided defense counsel with a  
4 restitution report claiming \$82,346.00 in loss for website removal, income loss, painting repairs, and  
5 cost and installation of security cameras. The prosecution again added more claims on or around  
6 May 9, 2022, claiming total loss in the amount of \$107,720.76 for income loss, website removal  
7 costs, security system purchase and installation, painting repairs, fees for the restraining order  
8 obtained, and attorney fees. Tomas Czodor provided quotes and bills for most of the recovery. He  
9 claimed and submitted a quote from a company called Guaranteed Removal in the amount of  
10 \$54,000 for the removal of 27 links that the prosecution and Tomas Czodor claimed that Ms. Luo  
11 posted. *See* Case No. 19CM06724.

14 Unbeknownst to defense, prior to the restitution hearing that was scheduled on May 9, 2022,  
15 Tomas Czodor made another police report against Ms. Luo on April 26, 2022 claiming violation of  
16 the restraining order.

18 On June 8, 2022, the Court conducted the sentencing, restitution hearing, after continuing  
19 the May 9, 2022 hearing. Judge Knox modified the restitution in the amount of \$93,003.76 as to  
20 count(s) 1, 2, 3 plus 10% interest from date of sentence per year, payable thru Victim Witness. Of  
21 the \$93,003.76, the Court awarded the \$54,000 for website removal of the 27 links admitted at the  
22 hearing. The following links were admitted at the restitution, sentencing hearing:

24 <https://cheaterbot.me/05/tomas-czodor-santa-ana-california/amp/>  
25 <https://officialcheaters.com/tomas-czodor-california/>  
26 <http://www.ripofflist.com/tomas-czodor-california/>  
27 <http://www.ripofflist.com/tomas-czodor-california/>  
28 <https://www.complainboard.com/tomas-czodor-california/>  
<https://www.badboysreport.com/tomas-czodor-california/>  
<https://www.dirtyex.com/tomas-czodor-california/>

1 <https://www.worstcheaters.com/tomas-czodor-california/>  
2 <https://hellocheater.online/tomas-czodor-santa-ana-california/>  
3 <https://xbtch.com/reviews/tomas-czodor-santa-ana-ca/97153/>  
4 <https://ask-anita.com/complaints/tomas-czodor-santa-ana-ca/>  
5 <https://cheatersdiaries.com/tomas-czodor-california/>  
6 <https://cheaters.exposed/tag/tomas-czodor-california-cheater-report/>  
7 <https://www.theevildoer.com/?s=Tomas+Czodor+>  
8 <http://gorgeouspainting1.blogspot.com>  
9 <https://gorgeouspainting.wordpress.com/>  
10 <https://reportcheaterincalifornia.wordpress.com/blog>  
11 <http://liarsandcheaters.com/tomas-czodor-santa-ana-orange-county-ca.html>  
12 <http://cheaterland.com/tomas-czodor-santa-ana-ca.html>  
13 <http://www.cheaterreports.com/tomas-czodor/>  
14 <https://reportcheatingonline.com/tomas-czodor-santa-ana-orange-county-ca/>  
15 <https://wtfcheater.com/tomas-czodor-santa-ana-orange-county-ca/>  
16 <https://reportcheatingwife.com/tomas-czodor-santa-ana-orange-county-ca/>  
17 <http://www.cheaterplanet.com/tomas-czodor-santa-ana-orange-county-ca.html>  
18 <https://www.youtube.com/channel/UC2G1-iqyaZoYAetaVsE4mg/about>  
19 <https://www.youtube.com/channel/UCUuoht2tl-dK5jROtqnzyg/about>  
20 <https://www.facebook.com/photo.php?fbid=10216661770199693&set=pb.1323771948.-2207520000..&type=3>

21 See Case No. 19CM06724

22 At the restitution, sentencing hearing, the prosecution did not prove that each link was in  
23 fact operable, but instead through the complaining witness testimony, claimed Tomas Czodor was  
24 entitled to the resitution in order to provide him with the monetary means to remove the websites.  
25 Prior to the resitution hearing, I recall verifying that only 2 out of the 27 links were actually in  
26 operation.

27 After the sentencing, restitution hearing ended, Ms. Luo received a letter from law  
28 enforcement in early September 2022, and she notified me immediately. In response, I contacted the  
detective and left a voicemail invoking Ms. Luo's constitutional rights and informed the detective to  
refrain from speaking with Ms. Luo without the presence of legal counsel. The detective never  
called back nor informed me what the underlying investigation was about.



1 On December 20, 2022, the Orange County District Attorney filed charges against Ms. Luo  
2 for violating Penal Code Section 273.6 on or around April 20, 2022. The District Attorney  
3 scheduled arraignment on February 24, 2023.

4  
5 When Ms. Luo received the arraignment letter, she contacted me and asked me what these  
6 new charges were about. According to the complaint on Vision:

7 On or about April 20, 2022, in violation of Section 273.6(a) of the  
8 Penal Code (VIOLATION OF A PROTECTIVE ORDER), a  
9 MISDEMEANOR, XINGFEI LUO did intentionally, knowingly, and  
unlawfully violate an order issued pursuant to Family Code sections  
6320 and 6389 by contacting protected party through online means.

10  
11 *See Case No. 23CM00067.*

12 In response to the ambiguous complaint, I filed a motion to dismiss on January 25, 2023,  
13 pursuant to Due Process under the U.S. and CA constitutions for facially insufficiency of the  
14 complaint, along with a demur under Penal Code Section 1004.

15 On February 7, 2023, the motion to dismiss was heard. However, prior to any court ruling,  
16 the prosecution agreed to amend the complaint on its own volition. The first amended complaint  
17 was filed on February 8, 2023 and read as follows:

18  
19 On or about April 20, 2022, in violation of Section 166 (a) (4) of the  
20 Penal Code (DISOBEY COURT ORDER), a MISDEMEANOR,  
21 XINGFEI LUO did willfully and unlawfully disobey the terms of a  
22 process and court order lawfully issued on or about 10/01/21 by the  
Superior Court, in and for the County of Orange County, State of  
23 California, 18V002374, which lawfully ordered defendant to remove  
any pictures or references of the protected party from any social  
media websites or blogs she may have posted.

24  
25 On February 10, 2023, Ms. Luo was arraigned on the new charges. The prosecution  
26 provided defense counsel with the police report, which traced back to Tomas Czodor's April 26,  
27 2022 complaint made prior to the scheduled May 9, 2022 resitution hearing.

1 The police report alleged violations for failing to remove websites about Tomas Czodor  
2 involving the older posts addressed in the family court case and the 19CM06724 trial and/or the  
3 sentencing, resitution hearing. The police verified that some of the older 2018 postings no longer  
4 worked and/or that the creator was unidentifiable. Tomas Czodor also speculated and accused Ms.  
5 Luo of newer posts, but the police verified that some of those posts were inoperable and/or that the  
6 creator was unidentifiable.  
7

8 On March 13, 2023, the assigned trial Deputy District Attorney for the month of March,  
9 informed me the prosecution is for the failure to remove the following website postings:

10 <http://gorgeouspainting1.blogspot.com>  
11 <https://gorgeouspainting.wordpress.com/>  
12 <https://www.youtube.com/channel/UC2G1-iqyaZoYAetaIVsE4mg/about>

13 These are the same websites that were addressed at the 19CM06724 trial October 19, 2018.

14  
15 I declare under penalty of perjury that the foregoing is true and correct.

16  
17 DATED: March 13, 2023

Respectfully submitted,  
FRANK DAVIS, Alternate Public Defender

18  
19 

20  
21 Marian Mikhail  
22 Deputy Alternate Defender  
23 Marian.mikhail@ocaltdef.com  
24  
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26  
27  
28

**MEMORANDUM OF LAW**

**I. A SUBSEQUENT PROSECUTION THAT INVOLVES THE SAME ALLEGED CRIMINAL ACT OF A PRIOR PROSECUTION VIOLATE DOUBLE JEAPARDY UNDER THE 5TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 15, OF THE CALIFORNIA CONSTITUTION.**

The Fifth Amendment to the United States Constitution guarantees that no “person will be subject for the same offense to be twice put in jeopardy of life or limb.” The Cal. Const. art. I, § 15, contains a nearly identical provision. These constitutional provisions include several distinct protections, including prohibitions against:

- (1) a second prosecution for the same offense after acquittal (*Illinois v. Vitale*, 447 U.S. 410, 415 (1980));
- (2) a second prosecution for the same offense after conviction (*U.S. v. Dixon*, 509 U.S. 688 (1993));
- (3) reprosecution after jeopardy had attached in a prior trial that was terminated without a verdict (*see U.S. v. DiFrancesco*, 449 U.S. 117, 130 (1980));
- (4) successive prosecutions for the same criminal act under two different statutes containing the same elements (*U.S. v. Dixon*, 509 U.S. 688, 696 (1993)); and
- (5) multiple prosecutions when collateral estoppel or res judicata applies to an issue of ultimate fact that has been resolved in a prior criminal proceeding, it cannot be relitigated in a subsequent prosecution or retrial (*Yeager v. U.S.*, 557 U.S. 110, 120–121 (2009); *Brown v. Superior Court*, 187 Cal. App. 4th 1511, 1524 (2d Dist. 2010)).

Jeopardy attaches when the defendant is placed on trial on a valid accusatory pleading before a competent court. In a jury trial, jeopardy attaches when the jury is impaneled and sworn. *Martinez v. Illinois*, 134 S. Ct. 2070, 2074 (2014); *Crist v. Bretz*, 437 U.S. 28, 35 (1978). If alternate jurors are used, jeopardy does not attach until the alternates are sworn. *In re Mendes*, 23 Cal. 3d 847, 852–854 (1979).

1     **II. A SUBSEQUENT PROSECUTION THAT INVOLVED THE SAME COURSE OF**  
2     **CONDUCT PROSECUTED IN THE PAST VIOLATES CALIFORNIA PENAL**  
3     **CODE SECTION 654.**

4     California is not precluded from providing greater double jeopardy protection than that  
5     provided by the U.S. Constitution. *Curry v. Superior Court*, 2 Cal. 3d 707, 717 (1970). California  
6     provides additional protections embodied in several Penal Code sections. *See e.g.*, Pen. Code §§  
7     654(a), 656, 687, and 1023. The Fifth Amendment establishes minimum, double jeopardy  
8     protection standards. Under the independent state grounds doctrine, California courts look both to  
9     decisions applying the Fifth Amendment and to decisions applying California constitutional and  
10    statutory protections. *Bunnell v. Superior Court*, 13 Cal. 3d 592, 601 (1975).

11    The California Supreme Court has expressly recognized that the purpose of Pen Code §  
12    654 is to prevent “needless harassment” of a defendant and, therefore, “all offenses ... which arise  
13    out of the same ... course of conduct must be prosecuted in a single proceeding.” *People v.*  
14    *Lohbauer*, 29 Cal. 3d 364 (1981).

15    Accordingly, Pen. Code, § 654 is a statutory bar, rather than a constitutional prohibition,  
16    against multiple prosecutions for the same offense. However, the protection under Pen. Code, §  
17    654 resembles that afforded by the double jeopardy clause, but is different in scope in that it applies  
18    only after an acquittal or a conviction and sentencing.

19    In *Kellett v. Superior Court of Sacramento County*, the Supreme Court held that when “the  
20    prosecution is or should be aware of more than one offense in which the same act or course of  
21    conduct plays a significant part, all such offenses must be prosecuted in a single proceeding unless  
22    joinder is prohibited or severance is permitted for good cause. 63 Cal. 2d 822, 827(1966). **Failure**  
23    **to unite all such offenses will result in a bar to subsequent prosecution of any offense omitted**  
24    **to be prosecuted in the same proceeding.**



1 if the initial proceedings culminate in either acquittal or conviction and sentence.” *Id.*  
2 (emphasis added).

3 Following *Kellett* and Pen. Code § 654, our appellate courts have adopted two different tests  
4 to determine a course of conduct for purposes of multiple prosecution *People v. Valli*, 187 Cal. App.  
5 4th 786 (3d Dist. 2010). Some appellate courts have established a “time and location” test to  
6 determine a course of conduct for purposes of multiple prosecution. These courts  
7 find *Kellett* inapplicable where the offenses are committed at separate times and locations, even  
8 though the prosecution is aware of the other offenses. See *People v. Marlow*, 34 Cal. 4th 131, 144  
9 (2004) (“the murder of separate victims on separate days in separate counties is not a single act or  
10 even a ‘course of conduct’ requiring a single prosecution”); *People v. Douglas*, 246 Cal. App. 2d  
11 594 (2d Dist. 1966) (series of robberies tried separately from homicide committed during one of the  
12 robberies); *People v. Ward*, 30 Cal. App. 3d 130 (2d Dist. 1973) (two separate but related victims  
13 assaulted at different locations and time); *People v. Cuevas*, 51 Cal. App. 4th 620 (2d Dist. 1996).

14 A second test applies *Kellett* based on the totality of the facts and whether separate proofs  
15 are required for the different offenses. See *People v. Flint*, 51 Cal. App. 3d 333 (2d Dist. 1975).  
16 This evidentiary test was restated in *People v. Hurtado*, 67 Cal. App. 3d 633 (2d Dist. 1977): “More  
17 specifically, if the evidence needed to prove one offense necessarily supplies proof of the other ...  
18 the two offenses must be prosecuted together, in the interests of preventing needless harassment and  
19 waste of public funds.” However, this evidentiary test requires more than an overlap of the  
20 evidence. Simply using facts from the first prosecution in the subsequent prosecution does not  
21 trigger application of *Kellett*. *People v. Valli*, 187 Cal. App. 4th 786 (3d Dist. 2010) (there was little  
22 evidentiary overlap between a murder trial and the subsequent trial for evading arrest, because the  
23 People only used the evidence of evading in the murder trial to show consciousness of guilt). See  
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1 also *People v. Linville*, 27 Cal. App. 5th 919 (1st Dist. 2018), review denied, (Jan. 16, 2019)  
2 (conviction as an accessory to murders did not require proof, nor was it alleged, that defendant was  
3 involved in either charged killing, therefore, accessory conviction did not require and was not  
4 predicated on an allegation that defendant committed, or was involved in, the murders and the  
5 accessory and murder prosecutions did not involve the same course of conduct).

7 If it is determined that the prosecution did have timely actual knowledge of multiple  
8 prosecutions arising from the same conduct, and one of the prosecutions resulted in either acquittal  
9 or conviction and sentence, then the remaining unresolved prosecution is barred by Pen. Code, §  
10 654. *In re Dennis B.*, 18 Cal. 3d 687, 693–696 (1976).

12 There are several factors to be weighed in determining whether the prosecutor should have  
13 known of the other offense. The threshold factor is the disparity, if any, between the two charged  
14 offenses. When both are serious offenses, the court in *In re Dennis B.*, 18 Cal. 3d 687, 694 (1976),  
15 recognized the duty imposed on the prosecution.

17 When both offenses are serious crimes, the potential for harassment and waste is sufficiently  
18 strong that Section 654 imposes on prosecutors an administrative duty to insure that the charges are  
19 joined. Although occasional failure to coordinate prosecutorial efforts may result in a defendant  
20 guilty of a felony escaping proper punishment, such a risk “is inherent in the preclusion of Section  
21 654 of multiple punishment.”

23 When the original charge is not a serious crime, the court must then weigh: (1) the disparity  
24 in gravity between the charged offenses; (2) the state's substantial interest in maintaining the  
25 summary nature of minor offenses; and (3) the state's interest in prosecuting felonies and serious  
26 misdemeanors. *In re Dennis B.*, 18 Cal. 3d 687, 695–696 (1976); *Kellett v. Superior Court of*  
27 *Sacramento County*, 63 Cal. 2d 822, 827–828 (1966).  
28

1     **III. A SUBSEQUENT PROSECUTION THAT INVOLVES IDENTICAL ISSUES OF A**  
2     **PRIOR PROSECUTION IS BARRED UNDER THE DOCTRINE OF COLLATERAL**  
3     **ESTOPPEL.**

4             In *Ashe v. Swenson*, 397 U.S. 436, 445 (1970), the Supreme Court held that the doctrine of  
5 collateral estoppel is contained in the Fifth Amendment guarantee against double jeopardy.

6             As the Supreme Court stated in *Ashe v. Swenson*, 397 U.S. 436, 443–444 (1970):“Collateral  
7 estoppel” is an awkward phrase, but it stands for an extremely important principle in our adversary  
8 system of justice. It means simply that when an issue of ultimate fact has once been determined by a  
9 valid and final judgment, that issue cannot again be litigated between the same parties in any future  
10 lawsuit. Although first developed in civil litigation, collateral estoppel has been an established rule  
11 of federal criminal law at least since this court's decision more than 50 years ago in *U.S. v.*  
12 *Oppenheimer*, 242 U.S. 85, (1916) ...

14             Federal appellate decisions establish that the rule of collateral estoppel in criminal cases is  
15 not to be applied in the hyper technical and archaic approach of 19th century pleading, but with  
16 realism and rationality. Where a previous judgment of acquittal was based upon a general verdict, as  
17 is usually the case, this approach requires a court to “examine the record of a prior proceeding,  
18 taking into account the pleadings, evidence, the charges, and other relevant matter and conclude  
19 whether a rational jury could have grounded its verdict upon an issue other than that which the  
20 defendant seeks to foreclose from consideration.” *Schiro v. Farley*, 510 U.S. 222, 247–248 (1994).  
21

22             The doctrine is based upon the sound public policy of limiting litigation by preventing a  
23 party who has had one fair trial on an issue from again requiring litigation. The purposes of  
24 collateral estoppel are to promote judicial economy by minimizing repetitive litigation, to prevent  
25 inconsistent judgments which undermine the integrity of the judicial system, and to provide repose  
26  
27  
28



1 by preventing a person from being harassed by vexatious litigation. *People v. Taylor*, 12 Cal. 3d  
2 686, 695 (1974).

3 “[F]ive threshold requirements” must be established for collateral estoppel to bar relitigation  
4 of an issue: “(1) the issue to be precluded must be identical to that decided in the prior proceeding;  
5 (2) the issue must have been actually litigated at that time; (3) the issue must have been necessarily  
6 decided; (4) the decision in the prior proceeding must be final and on the merits; and (5) the party  
7 against whom preclusion is sought must be in privity with the party to the former proceeding.”  
8 *People v. Garcia*, 39 Cal. 4th 1070 (2006); *People v. Vogel*, 148 Cal. App. 4th 131 (3d Dist. 2007).  
9  
10

#### 11 **IV. THE INTEREST OF JUSTICE DEMANDS DISMISSAL.**

12 The court has authority under Pen. Code § 1385 to dismiss a prosecution in the “furtherance  
13 of justice” at any time, including after trial. “Dismissals under Section 1385 may be proper before,  
14 during and after trial.” *People v. Orin*, 13 Cal. 3d 937 (1975). Pen. Code § 1385 permits a trial court  
15 to dismiss individual counts in accusatory pleadings, sentencing enhancements, allegations that the  
16 defendant has suffered a prior conviction, and allegations that the defendant has suffered a prior  
17 “strike.” *In re Varnell*, 30 Cal. 4th 1132, 1134 (2003).  
18  
19

20 In *People v. Superior Court of Marin County*, 69 Cal. 2d 491, 505 (1968), the court set forth  
21 a balancing test to guide the court in determining whether to dismiss in the interests of justice. The  
22 factors to be weighed include: (1) the weighing of the evidence indicative of guilt or innocence; (2)  
23 the nature of the crime involved; (3) the fact that the defendant has or has not been incarcerated in  
24 prison awaiting trial and the length of such incarceration; (4) the possible harassment and burdens  
25 imposed upon the defendant by a retrial; and (5) the likelihood, if any, that additional evidence will  
26 be presented upon a retrial. “When the balance falls clearly in favor of the defendant, a trial court  
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1 not only may but should exercise the powers granted to him by the Legislature and grant a dismissal  
2 in the interests of justice.”

3 The power invested in the court by Pen. Code § 1385 is a discretionary power that rests  
4 solely with the court. The power of the court to dismiss on its own motion is unaffected by  
5 prosecution objection. As the court stated in *People v. Tenorio*, 3 Cal. 3d 89 (1970):

7 The judicial power is compromised when a judge, who believes that a  
8 charge should be dismissed in the interests of justice, wishes to  
9 exercise the power to dismiss but finds that before he may do so he  
10 must bargain with the prosecutor. A judicial power must be  
independent, and a judge should never be required to pay for its  
exercise.

11 The California Supreme Court has held that “the discretion of the judge [under Section 1385] is  
12 absolute except where the Legislature has specifically curtailed it.” *People v. Superior Court of*  
13 *Marin County*, 69 Cal. 2d 491 (1968).

### 16 ARGUMENT

#### 17 **I. THIS CURRENT PROSECUTION VIOLATES DOUBLE JEOPARDY UNDER THE** 18 **5TH AMENDMENT OF THE U.S. CONSITUTION AND ARTICLE I, SECTION 15,** 19 **OF THE CALIFORNIA CONSTITUTION.**

20 First, the current prosecution violates Ms. Luo’s Federal and California Constitutional  
21 guarantees because she cannot be tried for the same offense once previously prosecuted and  
22 convicted. *U.S. v. Dixon*, 509 U.S. 688 (1993). Second, the two prosecutions involve the same  
23 criminal act, but under two different statutes containing the same elements, which also violates  
24 Constitutional guarantees. *See (U.S. v. Dixon*, 509 U.S. 688 (1993). *Id.* At 696. Lastly, collateral  
25 estoppel applies here because an issue of ultimate fact that has been resolved in Ms. Luo’s prior  
26 criminal proceeding, cannot be relitigated in a subsequent prosecution or retrial. *Yeager v. U.S.*, 557  
27 U.S. 110, 120–121 (2009); *Brown v. Superior Court*, 187 Cal. App. 4th 1511, 1524 (2d Dist. 2010).

**a. Same Offense Once Previously Prosecuted**

The facts, order, and issue in this prosecution is the same as 19CM06724. Ms. Luo was found guilty of count 2, Penal Code Section 273.6, of Case No. 19CM06724, which alleged Ms. Luo disobeyed a domestic relations court order for “fail[ing] to deactivate websites and creat[ing] new websites. At sentencing, Ms. Luo was ordered to pay Tomas Czodor \$54,000 in order to give him money to remove 27 websites the prosecution purported Mr. Czodor was entitled to in connection to Count 2’s conviction.

Ms. Luo is now charged with Penal Code Section 166(a)(4) in Case No. 23CM00067 for failing to “to remove any pictures or references of the protected party from any social media websites or blogs she may have posted.” The same links the prosecution intends to criminalize in this case, Case No. 23CM00067, are the same links that Ms. Luo was held liable for in Case No. 19CM06724. Both cases rely upon the same family court order issued out of Case No. Case No.18V002374.

The prosecution’s attempt to rely on the family court’s amended order that was issued on October 01, 2021 for this secondary prosecution—as opposed to the initial order issued on October 19, 2018 involving Case No. 19CM06724—is a logical fallacy to suggest there are two separate orders that warrant two separate causes of action. There is only one order, and that amendment issued on October 1, 2021 never modified Ms. Luo’s restraints, but only changes what can prospectively be communicated online to comport with Free Speech guarantees. Nonetheless, the same provision that was relied upon in the 19CM06724 prosecution is the same provision this prosecution relies upon, which is the “[r]esponding Party is further ordered to remove any pictures or references of the Moving Party from any social media website or blog she may have posted.”



1 This provision exists in both version of the order that was issued on October 19, 2018 and October  
2 01, 2021.

3 **b. Same Criminal Act, but Under Two Statutes**

4 Ms. Luo's constitutional rights are not obviated because this current prosecution alleges the  
5 same violation under a different statute. The criminal act in the prior prosecution of Case No.  
6 19CM06724 is the same as the current prosecution of Case No. 23CM00067, which involve the  
7 same elements. Both counts require the government to prove beyond a reasonable doubt that: (a) a  
8 court lawfully issues a written order that the defendant [insert description of the order]; (b) the  
9 defendant knew of the order; (c) the defendant had the ability to follow the order; and the (d) the  
10 defendant willfully violated the court order.  
11

12 **c. Collateral Estoppel**

13 *See infra*. Section III of Argument.  
14

15  
16 **II. THIS CURRENT PROSECUTION VIOLATES PENAL CODE SECTION 654**  
17 **UNDER CALIFORNIA LAW.**

18 The prosecution should be barred from prosecuting Ms. Luo in Case No. 23CM00067  
19 because she was already prosecuted and punished for count 2 of Case No. 19CM06724. Penal Code  
20 Section 654(a) states:

21 An act or omission that is punishable in different ways by different  
22 provisions of law may be punished under either of such provisions,  
23 but in no case shall the act or omission be punished under more than  
24 one provision. An acquittal or conviction and sentence under any one  
bars a prosecution for the same act or omission under any other.

25 Section 654 imposes a duty onto the prosecution to join all offenses in a single prosecution; and  
26 when the prosecution fails to unite all causes of action it knew about, or should have known about,  
27 the Supreme Court has held a bar in prosecutions. *See Kellet*, 63 Cal. 2d 822, 827(1966) ("Failure to  
28



1 unite all such offenses will result in a bar to subsequent prosecution of any offense omitted if the  
2 initial proceedings culminate in either acquittal or conviction and sentence.”).

3 Here, the current websites at issue stem from postings that go back to 2018. The prosecution  
4 actually knew about these websites at the time of the 19CM06724 prosecution. This is demonstrated  
5 by the prosecution’s decision to amend the 19CM06724 complaint and the specific evidence it  
6 admitted at trial and the resitution hearing. The prosecution amended the complaint to state the  
7 violation of the restraining order was for failing to remove websites and creating new ones.  
8 Therefore, the prosecution knew about websites alleged at the family court hearing on October 19,  
9 2018, but “new” websites in addition to what occurred at the hearing, in accordance to the  
10 complaint’s allegation. Furthermore, the prosecution submitted exhibits and testimony from the  
11 family court hearing of Tomas Czodor testifying about Ms. Luo posting “28 times” that involved  
12 multiple cheater websites and youtube videos. Indicating the prosecution knew, or should have  
13 known, what its star witness was talking about. Lastly, the prosecution admitted 27 links at the  
14 resitution hearing, claiming Tomas Czodor was entitled to \$54,000 in resitution based on Ms. Luo’s  
15 conviction of Count 2, exhibiting knowledge of the harm it sought to prosecute in 19CM06724 (and  
16 seeks to prosecution again).

17 The same links the prosecution seeks to criminalize in this prosecution are the same links  
18 that existed at the time Tomas Czodor filed for a restraining order in family court, Case  
19 No.18V002374., and links that were admitted at the 19CM06724 trial and resitution hearing.

20 Lastly, there is nothing in the evidence to suggest this current prosecution needs different  
21 evidence or information to warrant a successive prosecution under law. All of these accusations  
22 involve the same family court restraining order, same complaining witnesses, and same evidence.  
23  
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1 **III. THIS CURRENT PROSECUTION SHOULD BE BARRED UNDER THE**  
2 **DOCTRINE OF COLLATERAL ESTOPPEL.**

3 “[F]ive threshold requirements” must be established for collateral estoppel to bar relitigation  
4 of an issue: “(1) the issue to be precluded must be identical to that decided in the prior proceeding;  
5 (2) the issue must have been actually litigated at that time; (3) the issue must have been necessarily  
6 decided; (4) the decision in the prior proceeding must be final and on the merits; and (5) the party  
7 against whom preclusion is sought must be in privity with the party to the former proceeding.”  
8 *People v. Garcia*, 39 Cal. 4th 1070 (2006); *People v. Vogel*, 148 Cal. App. 4th 131 (3d Dist. 2007).  
9

10 Here, the issue in the prior case 19CM06724 is identical to the issue in this prosecution:  
11 failure to remove websites in violations of family court ordered in Case No. 18V002374. The family  
12 court order never specifically identified which websites Ms. Luo was required to remove or by what  
13 date. Instead, it ordered to remove any website she may have posted. Because the family court order  
14 did not identify what specific links must be removed, the issue in collateral estoppel should not be  
15 expanded on whatever and whenever the prosecution seeks to prosecute based on a specific link it  
16 sees fit for criminal liability. The issue here was failing to remove website which was clearly  
17 litigated in case 19CM06724, and it ultimately resulted in a conviction, which is a final judgement  
18 on the merits. Lastly, the prosecution involved the same exact parties as the former proceeding:  
19 State of California versus Xingfei Luo, with the same complaining witness, Tomas Czodor.  
20  
21

22  
23 **IV. THIS PROSECUTION SHOULD BE DISMISSED IN THE INTEREST OF JUSTICE**  
24 **UNDER PENAL CODE SECTION 1385.**

25 In *People v. Superior Court of Marin County*, 69 Cal. 2d 491, 505 (1968), the court set forth  
26 a balancing test to guide the court in determining whether to dismiss in the interests of justice. The  
27 factors to be weighed include: (1) the weighing of the evidence indicative of guilt or innocence; (2)  
28

1 the nature of the crime involved; (3) the fact that the defendant has or has not been incarcerated in  
2 prison awaiting trial and the length of such incarceration; (4) the possible harassment and burdens  
3 imposed upon the defendant by a retrial; and (5) the likelihood, if any, that additional evidence will  
4 be presented upon a retrial. "When the balance falls clearly in favor of the defendant, a trial court  
5 not only may but should exercise the powers granted to him by the Legislature and grant a dismissal  
6 in the interests of justice."

8 Here, the interest of justice lays heavily in favor of Ms. Luo. The websites that the  
9 prosecution seeks to criminalize are websites Ms. Luo has already been punished for by serving a  
10 jail sentence, participating in weekly therapy for 52 weeks, and paying Tomas Czodor \$93, 003.76,  
11 and \$54,000 is specifically allotted to remove websites.

13 The successive prosecutions are tantamount to harassment and unfair prosecution. At the  
14 restitution, sentencing hearing, the prosecution did not even prove that each link was validly  
15 operating. Only 2 out of the 27 were operating at the time, and the complainant was awarded not  
16 restitution, but a windfall.

18 Ms. Luo has been punished enough, legally and symbolically. Nothing in the evidence  
19 suggests Ms. Luo is the creator and has dominion and control over these websites to remove them.  
20 This secondary prosecution should be dismissed in the interest of justice.

### 22 CONCLUSION

23 For the foregoing reasons, Ms. Luo's case should be dismissed.

1 DATED: March 14, 2023

2 Respectfully submitted,  
3 FRANK DAVIS, Alternate Public Defender

4 

5 \_\_\_\_\_  
6 Marian Mikhail  
7 Deputy Alternate Defender  
8 Marian.mikhail@ocaltdef.com  
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Telephone: (657) 251-6730  
Attorneys for Defendant

Date: March 16, 2023  
Dept: C47

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE; CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Luo, Xingfei,

Defendant.

Case No.: 23CM00067

REQUEST AND ORDER  
SHORTENING TIME

TO: ORANGE COUNTY DISTRICT ATTORNEY; DEPUTY DISTRICT ATTORNEY; THE  
HONORABLE PRESIDING JUDGE, DEPT. C47; AND THE CLERK OF THE  
SUPERIOR COURT, DEPT. C47:

On March 14, 2023, the Orange County Alternate Defender's Office, on behalf of  
XINGFEI LUO, filed an omnibus motion to dismiss to be heard on March 21, 2023.

Pursuant to Local Rule 850 and Rule 4.111 of the California Rules of Court, one of the  
motions requires 10 court-day notice. However, due to the unique procedural time constraints of  
the aforementioned motion, defense counsel was unable to comply with the notice requirement due  
to new information relayed upon on Monday, March 13, 2023.

As of Friday, March 10, 2023, defense counsel was still not in position of all discovery,  
which has caused confusion about the prosecution's criminal act election.

Defense is in possession of the police report, which has caused the confusion about which

**RECEIVED**

MAR 14 2023

OFFICE OF THE DISTRICT ATTORNEY  
CENTRAL JUSTICE CENTER  
SANTA ANA, CA



1 On Friday afternoon, March 10, 2023, Deputy District Attorney (DDA) Therese Ellis  
2 explained the criminal act involves online postings that Ms. Luo failed to remove back in 2018, as  
3 opposed to other accusations of “newer” posts made in the police report, irrespective of the date of  
4 harm alleged on the complaint, April 20, 2022. In the abundance of caution, defense counsel again  
5 conferred with the prosecution over the weekend to ascertain which links were at issue so no  
6 miscommunication would occur at trial and so Ms. Luo can meaningfully defend herself against  
7 the allegations. On Monday, March 13, 2023, DDA Ellis informed defense counsel of 3 links (out  
8 of ~10) that were at issue in this prosecution.

9 This key clarification has transformed defense counsel’s understanding of the prosecution  
10 and now warrants to current motion practice to dismiss the information against Ms. Luo pursuant  
11 to her State and Federal rights.

12 As soon as the prosecution ascertained which links were at issue, a motion to dismiss was  
13 drafted, served, and filed within 24-hours, on March 14, 2023. The motion is scheduled for March  
14 21, 2023, which is also the date defense counsel intends to trail Ms. Luo’s trial, since defense  
15 counsel stated ready on a separate trial and cannot be ready on March 16, 2023.

16 If the Court denies the request for an order shortening time, the motion to dismiss will be  
17 set on March 27, 2023, which is day 45 of 45 of Ms. Luo’s speedy trial right. At this time, Ms. Luo  
18 waives no speedy trial rights and demands a trial within her statutory right.

19 Ms. Luo should not have to waive her right to a speedy trial to have her motion to dismiss  
20 heard when such information was not clear to the defense according to the original complaint,  
21 amended complaint, and police report, in light of missing discovery.

22 DATED: March 13, 2023

23 Respectfully submitted,  
FRANK DAVIS, Alternate Public Defender

24  
25 

26  
27 \_\_\_\_\_  
Marian Mikhail  
Deputy Alternate Defender  
Marian.mikhail@ocaltdef.com  
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Luo, Xingfei,

Defendant.

Case No.: **23CM00067**

**ORDER SHORTENING TIME**

**GOOD CAUSE APPEARING**, it is hereby ordered the time for notice required to file and litigate defense's "Motion to Dismiss" to be shortened to allow a hearing to occur earlier than Rule 800 and Rule 4.111 requires.

**IT IS FURTHER ORDERED** the clerk in Dept. \_\_ of the Orange County Superior Court accept the "Motion to Dismiss" and schedule a hearing date for March 16, 2020, in Dept. \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

TODD SPITZER, DISTRICT ATTORNEY  
COUNTY OF ORANGE, STATE OF CALIFORNIA  
DANIEL MCDONALD, SBN 322258  
Deputy District Attorney, County of Orange  
700 Civic Center Drive West  
Santa Ana, California 92701  
Phone: (714) 834-3952

Attorney for Plaintiff

**FILED**  
**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ORANGE**  
**MAR 20 2023**  
DAVID H. YAMASAKI, Clerk of the Court  
BY: M. DIAZ **MD** DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

XINGFEI LUO,

Defendant.

Case No. 23CM00067

PEOPLE'S OPPOSITION TO  
DEFENSE'S OMNIBUS MOTION  
TO DISMISS.

Date: March 20, 2023  
Time: 8:30 a.m.  
Dept.: C47

Comes now the People of the State of California, by and through their attorney, TODD SPITZER, Orange County District Attorney, DANIEL MCDONALD, Deputy District Attorney, and respectfully submits the following Opposition to Defense's Motion to Dismiss for Violations of the Double Jeopardy Clauses of the U.S. and California Constitutions; Penal Code section 654; the Doctrine of Collateral Estoppel; and under Penal Code section 1385. The People respectfully request this court deny Defense's motion as it is without merit.

The facts within this motion are based on information contained within the Court's case files under the following case numbers: 18V002374; 19CM06724; 23CM00067<sup>1</sup>; as well as police reports and documents under Santa Ana Police Department DR number 22-09260 submitted to the Orange County District Attorney's Office in Case 23CM00067.

<sup>1</sup> The People request the Court take judicial notice of the aforementioned files under California Evidence Code section 452(d).

**STATEMENT OF FACTS**

On October 19, 2018, The Victim in the present case, Tomas Czodor, obtained a Domestic Violence Restraining Order (DV-130) against the named Defendant, Xingfei Luo, signed by Commissioner Renee E. Wilson. Item #23 of that order referenced an attachment to the order stating, in relevant part, “[Defendant] is further ordered to remove any pictures or references of the [Victim] from any social media websites or blogs she may have posted.”

On August 6, 2019, the People filed a criminal complaint against Defendant under Case Number 19CM06724 alleging in Count 2 a violation of Penal Code section 273.6(a) with a violation date of September 26, 2018. This filing was based on a Santa Ana Police Department investigation showing that Defendant posted nude photographs of the Victim and refused to take them down. On July 26, 2021, the People filed a first amended complaint, with a relevant alteration being a change in violation date to “on or about and between September 26, 2018 and January 23, 2019.” On July 29, 2021, Defendant was convicted at jury trial of Count 2. Pursuant to the conviction, Judge Knox issued a Criminal Protective Order (CR-160) on August 13, 2021 ordering Defendant to, among other things, “not harass ... [or] disturb the peace ... of [the victim].” That order is set to expire on August 13, 2024.

On October 1, 2021, an amended Domestic Violence Restraining Order was issued in case 18V002374. The amendment did not change the language of the attachment mentioned in Item 23. In other words, the Defendant was ordered at that moment to remove any pictures or references of the Victim from any social media websites or blogs she may have posted. That order is set to expire October 19, 2023.

On December 20, 2022, the Orange County District Attorney’s Office filed a criminal complaint in the present case alleging a violation of Penal Code section 166(a)(4) with a violation date of April 20, 2022. The Complaint is based on an investigation conducted by SAPD Detective Brenda Ruvalcaba, who discovered that the websites were still online as recently as 8/31/22. Detective Ruvalcaba noted specifically that the following 2 links were active and in violation of the court orders in cases 18V002374 and 19CM002374:

1 <https://gorgeouspainting.wordpress.com/>

2 <https://www.youtube.com/channel/UC2G1-iqyaZoYAetalVsE4mg/about>

3 Detective Rubalcava notes in her report that the first link contains photos of the Victim  
4 while the second link contains personal identifying information of the Victim.

5 **MEMORANDUM OF LAW AND ARGUMENT**

6 Defense's motion raises four issues: (1) a violation of the Double Jeopardy Clause  
7 under the 5th Amendment of the U.S. Constitution and Article 1, Section 15, of the California  
8 Constitution; (2) Preclusion from prosecution under Penal Code Section 654; (3) Preclusion  
9 from prosecution under the Doctrine of Collateral Estoppel; and (4) An invitation to dismiss  
10 under Penal Code section 1385.

11 **I. NEITHER THE DOUBLE JEOPARDY CLAUSE OF THE U.S.**  
12 **CONSTITUTION OR THE CALIFORNIA CONSTITUTION PREVENT THE**  
13 **DEFENDANT FROM BEING PROSECUTED THE PRESENT CASE.**

14 The Fifth Amendment to the United State Constitution states in relevant part that that  
15 "[no] person be subject for the same offence to be twice put in jeopardy of live or limb...." The  
16 U.S. Constitution's language is echoed in Article 1, Section 15 of the California Constitution,  
17 which states "Persons may not twice be put in jeopardy for the same offense...." Cal. Const.  
18 Art. I, section 15.

19 In *U.S. v. Dixon*, the Court discusses the *Blockburger* test, which is also referred to as  
20 the same elements test in determining whether Double Jeopardy applies. *Dixon* 509 U.S. 688  
21 (1993). The *Blockburger* test analyzes whether each offense contains an element not contained  
22 in other offense. *Id.* at 696. If both offenses contain the same exact elements, they are  
23 considered the same offense and the second prosecution is barred as a violation of the Double  
24 Jeopardy clause. *Id.*

25 In the instant case, the elements of the offenses are different due to the underlying  
26 orders being different. Defendant's first trial was for a violation of an order issued on October  
27 22, 2018. That order was amended on October 1, 2021, after Defendant's conviction in the first



1 trial. Because the order was issued after the first trial, the elements which People will have to  
2 prove at trial are different. Because the elements are different, the *Blockburger* test is  
3 dispositive on the issue, and the Double Jeopardy Clause does not apply.

4 **II. CALIFORNIA PENAL CODE SECTIONS 654 AND 1023 DO NOT PREVENT**  
5 **THE DEFENDANT FROM BEING PROSECUTED THE PRESENT CASE.**

6 California Penal Code section 654 states in relevant part “[a]n acquittal or conviction  
7 and sentence under any one bars a prosecution for the same act or omission under any other.”  
8 Cal. Penal Code § 654. California Penal Code section 1023 states: “[w]hen the defendant is  
9 convicted ... the conviction ... is a bar to another prosecution for the offense charged in such  
10 accusatory pleading, or for an attempt to commit the same, or for an offense necessarily  
11 included therein, of which he might have been convicted under that accusatory pleading.”

12 In the instant case, Penal Code section 654 does not apply as the charged conduct could  
13 not have taken place in her jury trial in case 19CM06724. The present case involves Defendant  
14 violating an order that was issued after a jury had found her guilty in her first trial. Because  
15 Defendant’s violations in the present case could not have taken place in the first trial, Penal  
16 Code sections 654 and 1023 do not apply.

17 Defense states that at Defendant’s first trial, the People amending the complaint to  
18 include Defendant’s refusal to take down the orders constitutes prosecution for the same  
19 offense as alleged in the present case. However, in filing the first amended complaint, the  
20 People specified by date the conduct which the Defendant was prosecuted for. Namely, her  
21 refusal to take down the postings from September 26, 2018 to January 23, 2019. The present  
22 case involves prosecution for the websites remaining up on April 20, 2022. Because the offense  
23 dates are different, Penal Code sections 654 and 1023 do not apply.

24 **III. THE DOCTRINE OF COLLATERAL ESTOPPEL DOES NOT PREVENT THE**  
25 **DEFENDANT FROM BEING PROSECUTED THE PRESENT CASE.**

26 In applying the doctrine of collateral estoppel, the court must analyze the following  
27 elements: (1) the issue to be precluded must be identical to that decided in the prior proceeding;

(2) the issue must have been actually litigated at that time; (3) the issue must have been necessarily decided; (4) the decision in the prior proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be in privity with the party to the former hearing. *People v. Garcia* 39 Cal. 4<sup>th</sup> 1070 at 1077.

The issue in the present case is not identical to that in the previous case. The order in the present case was issued after she was convicted in the first trial, thus rendering it impossible for her to be convicted of the same order in the first case. Additionally, the issue in the present case involves a different date of violation; a date which the website had remained up. The issue in the present case could not have been necessarily decided because it involves an order that did not exist at the time of the first trial. The People concede the fourth and fifth elements. Because elements one, two, and three are not met, the doctrine of collateral estoppel does not apply.

**IV. THE COURT SHOULD NOT ACCEPT DEFENSE'S INVITATION TO DISMISS THIS CASE PURSUANT TO PENAL CODE SECTION 1385.**

California Penal Code section 1385(a) states that a judge may dismiss a case in furtherance of justice. Cal. Penal Code § 1385. In doing so, the reasons for dismissal must be stated orally on the record and entered into the minutes upon request by either party. *Id.* A dismissal shall not be made for any cause that would be grounds of demurrer to the accusatory pleading. *Id.*

In the present case, a dismissal is not warranted due to the new harm the Victim faces every day that the websites remain up. Despite being convicted by a jury, the Defendant insists on damaging him further by keeping the websites online. The evidence will show in the present case that the Victim lives both his personal and professional lives online, and is subject to new harm every day. Although he has been awarded restitution, he faces the possibility of losing future business and damage to personal relationships due to the Defendant's conduct.

**CONCLUSION**

For the aforementioned reasons, Defense's motion should be denied, and this case should not be dismissed.

Dated this 20 day of March, 2023.

Respectfully submitted,  
TODD SPITZER  
District Attorney

  
DANIEL B. MCDONALD  
Deputy District Attorney

**COURT ADVISEMENTS AND TRIAL STIPULATIONS – 062**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

MAR 22 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: M. PLUZ, DEPUTY

**Case No.:** 23CM00067

**Case Name:** Xingfei Luo

1. Counsel has been provided with the C53 Trial Rules and Jury Selection Process, have read them, and are expected to comply with them.
2. **Jury Instructions:** The Court and counsel may discuss, and review proposed jury instructions without the presences of the defendants(s) and without recording/reporting the proceedings, except any objections to proposed instructions and arguments concerning giving or not giving a particular instruction will be recorded/reported.
3. **Adjournment Admonition:** Counsel and the defendant(s) waive the requirement of the adjournment admonition (Pen. C. § 1122(b) at each recess or adjournment.
4. **Pronouncement of Presence:** Counsel and the defendant(s) waive the Court's pronouncement of the presence of the attorneys, parties, and jurors at the commencement of each session.
5. **Bench Conferences/Sidebars:** The defendant(s) need not be present during bench conferences or sidebars involving evidentiary issues, scheduling, or any other bench conference or sidebar during jury selection or the presentation of evidence.
6. **Jury Deliberations:** If counsel choose not to remain in the courtroom during jury deliberations:
  - a. The Court may exercise control over exhibit(s) going into the jury room where the exhibit(s) is/are of a dangerous nature.
  - b. The clerk may, if so, requested by the jury, prepare playback of testimony without the necessity of the Court, counsel, or the defendant(s) being present. Counsel will be notified of what testimony is requested prior to providing the jury with said testimony.
  - c. The Court may, with agreement of counsel, answer any written questions from the jury after in person or telephonic consultation with counsel and without the defendant(s)' presence.
  - d. The defendant(s) waives his/her presence for play back requested and/or any questions or requests from the jury while in deliberations.

- e. The Court, counsel, and the defendant(s) need not be present in the courtroom when the jury breaks for or returns from recesses during deliberations.
  - f. Counsel will attend court within 15 minutes of telephonic notice.
  - g. Unless ordered to remain in the courtroom during deliberations, the defendant(s) will attend court within 15 minutes of telephonic notice.
  - h. In the event the trial judge is absent, the verdict may be received by any judge of this court.
  - i. During jury deliberations, the alternate jurors need not remain in the courtroom, but may instead be subject to telephonic recall as needed.
7. **Verdicts:** After the first verdict has been read by the clerk, the clerk need not read the case caption before reading any subsequent verdicts.

**IT IS SO STIPULATED.**

Dated: 3/22/23.

  
\_\_\_\_\_  
**Attorney for the People**

  
\_\_\_\_\_  
**Attorney for Defendant**

  
\_\_\_\_\_  
**Defendant-signature**

**The above stipulations are suggested by the Court. Please inform the Court of any suggested modifications or objections.**



FRANK S. DAVIS  
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*Attorneys for Defendant*

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

MAR 22 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: M. RUIZ DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

*Plaintiff,*

vs.

XINGFEI LUO,

*Defendant*

Case No.: 23CM00067

MOTIONS *IN LIMINE*.

Trial Date: March 22<sup>nd</sup>, 2023

Time: 9:00 a.m.

Dept. TBD

XINGFEI LUO **HEREBY RESPECTFULLY MOVES** this Court for orders *in limine*.  
This motion is based on this notice, the attached Memorandum of Points, Authorities, and  
Arguments, attached exhibits, and any other evidence, documentary or oral, that may be presented  
at the hearing on this motion.

**POINTS AND AUTHORITIES**

California Evidence Code Section 402, subdivision (b) provides, in part, that “[t]he court  
may hear and determine the question of the admissibility of evidence out of the presence or hearing  
of the jury.” (Cal. Evid. Code § 402(b).) Motions *in limine* serve to give the parties an

MOTIONS IN LIMINE 23CM00067 PEOPLE V. XINGFEI LUO - 1

1 understanding of what evidence will be admissible and what must be excluded from the jury. As  
2 noted by the Court of Appeal, First District in *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325,  
3 337, “[t]he advantage of such motions is to avoid the obviously futile attempt to ‘unring the bell’  
4 in the event a motion to strike is granted in the proceedings before the jury.”

5  
6 **I. STATEMENT OF THE CASE**

7  
8 The Orange County District Attorney’s office filed a misdemeanor complaint against  
9 Xingfei Luo, alleging “On or about April 20<sup>th</sup>, 2022, in violation of Section 166(a)(4) of the  
10 Penal Code (DISOBEY COURT ORDER), a MISDEMEANOR, XINGFEI LUO did willfully  
11 and unlawfully violate the terms of a process and court order issued on or about 10/1/21 by the  
12 Superior Court, in and for the County of Orange County, State of California, 18V002374, which  
13 lawfully ordered defendant to remove any pictures or references of the protected party from any  
14 social media website or blogs she may have posted.”

15  
16 On April 22<sup>nd</sup>, 2022, Tomas Czodor, the alleged victim in this case, contacted Santa Ana  
17 Police Department to inform them that he discovered posts on the internet portraying him in a  
18 negative light. Mr. Czodor alleged six links to multiple websites. Upon investigation, Detective  
19 Rubacava at the Santa Ana Police Department discovered four of those links were dead. Of the  
20 remaining two links, one was a YouTube channel page for a channel containing Mr. Czodor’s  
21 name, address, and telephone number in the “About” section. There are no videos present on the  
22 site. The second page was a page on Wordpress, an online blogging site, that featured lightly-  
23 censored naked photos of Mr. Czodor and accusations of fraud and cheating.

24  
25 Upon further investigation, the Santa Ana Police Department discovered an active  
26 restraining order from family court case 18V002374, ordering the defendant in this case, Ms.

27  
MOTIONS IN LIMINE 23CM00067 PEOPLE V. XINGFEI LUO - 2

1 Luo, to remove any postings related to the alleged victim, Mr. Czodor. This order was made on  
2 October 19<sup>th</sup>, 2018 and lasted for five years. Relying on an alleged minute order from the 2018  
3 hearing on the order that allegedly states Ms. Luo took credit for two YouTube videos posted to  
4 the internet, the Santa Ana Police Department forward the case to the district attorney's office for  
5 filing.

6 Ms. Luo was previously convicted in 2021 of failure to remove the same posts being  
7 alleged today. On October 1<sup>st</sup> of 2021, Ms. Luo brought the case before Judge Michael Perez in  
8 family court, asking for the order to be rescinded because of lack of jurisdiction or, barring that,  
9 a change in the order to remove restrictions on her right to free speech. Judge Perez denied the  
10 first request and left in place the order to remove the old posts, but amended the order so that,  
11 going forward, Ms. Luo could post about Mr. Czodor, as long as those posts did not rise to the  
12 level of harassment.  
13

14 The case now comes before this court for pretrial motions and jury trial.  
15

16 **II. MOTIONS IN LIMINE**

17 **1. *GENERAL IN LIMINE* MOTIONS**

18 A. Motion to exclude all witnesses from the courtroom pursuant to Evidence Code §777.  
19

20 **Granted:\_\_\_\_\_ Denied:\_\_\_\_\_**  
21

22 B. Motion to admonish all witnesses not to communicate with one another during the  
23 course of the trial on matters regarding this case. Motion to advise the prosecutor to  
24 inform prosecution witnesses not to communicate with one another during the course  
25 of the trial on matters regarding the case.  
26  
27

1                                   **Granted:**\_\_\_\_\_

**Denied:**\_\_\_\_\_

2  
3           C. Motion for each objection posed during in limine motions to be deemed a continuing  
4           objection to the admission of the proffered evidence.

5  
6                                   **Granted:**\_\_\_\_\_

**Denied:**\_\_\_\_\_

7  
8           D. Motion for the Court to order that all parties refrain from referring to the Office of the  
9           District Attorney by “the people”.

10  
11                                  **Granted:**\_\_\_\_\_

**Denied:**\_\_\_\_\_

12  
13  
14           E. Motion to Order the prosecutor to refrain from referring to Defense Counsel as the  
15           Public Defender or an employee of Orange County. Order the prosecutor to instruct  
16           all his witnesses to do the same.

17                                  **Granted:**\_\_\_\_\_

**Denied:**\_\_\_\_\_

18  
19           F. Motion to have the entire jury trial recorded, including all discussions that are made  
20           outside the presence of the jury.

21  
22                                  **Granted:**\_\_\_\_\_

**Denied:**\_\_\_\_\_

23  
24           G. Motion to order the Deputy District Attorney to refrain from making any comment,  
25           insinuation, or statement at any time during the trial of this matter with respect to the  
26           defendant’s assertion of the defendant’s right to remain silent or failure to testify.



Granted: \_\_\_\_\_

Denied: \_\_\_\_\_

**2. MOTION TO PRECLUDE THE PROSECUTION FROM ATTEMPTING TO AMEND THE COMPLAINT.**

The defense would move to preclude the prosecution from amending the complaint. The original complaint in this matter was filed on December 30th, 2022. It was then amended on February 8<sup>th</sup>, 2023. Ms. Luo has not waived time. The prosecution has had ample time to amend the complaint, prior to the commencement of *in limine* proceedings. "Because amendment of an information at trial is proper only if it does not compromise the defendant's substantial rights (*People v Jones* (1985) 164 CA3d 1173, 1178), amendments during trial are rarely permitted. By that time, defense counsel may be committed to a defense that he or she would not otherwise have pursued if counsel had known of the new charge. To amend the complaint at this time would deprive Ms. Luo due process rights and ability to defend herself during trial.

Granted: \_\_\_\_\_

Denied: \_\_\_\_\_

**3. THE DEFENSE REQUESTS THAT THE PROSECUTION DISCLOSE ANY AND ALL EXCULPATORY AND IMPEACHMENT EVIDENCE AS REQUIRED BY *BRADY* AND ITS PROGENY.**

The prosecution has an affirmative duty to disclose all evidence favorable to the defense that is material to guilt or punishment. *Brady v. Maryland* (1963) 373 U.S. 83. This obligation includes all evidence that is exculpatory, mitigating, would reduce a penalty, or might be used to impeach a prosecution witness. (*Id.* at 88.) This requirement not only covers evidence likely to affect a verdict, but all evidence that reasonably may help the defense. *People v. Morris* (1988) 46 Cal.3d 1, 30. This duty extends to impeachment evidence. *United States v. Bagley* (1995) 473 U.S. 667. This requirement includes all records of any prior misdemeanor conduct by prosecution witnesses. *People v. Santos* (1994) 30 Cal.App.4th 169, 177-78. That the prosecution may not have



1 this evidence readily available is no excuse. This evidence must be disclosed even if it is only in  
2 the constructive possession of the prosecution (i.e. in the possession of law enforcement,  
3 investigative, or lab personnel who assist in prosecuting crimes). See *In re Brown* (1998) 17  
4 Cal.4th 873, 879. Moreover, the individual prosecutor has a duty to learn of favorable evidence  
5 known to others acting on the government's behalf. See *Kyles v. Whitley* (1995) 514 U.S. 419,  
6 438-39.

7  
8 **Granted:** \_\_\_\_\_

**Denied:** \_\_\_\_\_

9  
10 **4. MOTION FOR PROSECUTION TO PROVIDE DEFENSE WITH COPIES**  
11 **OF ANY PHOTOS, EXHIBITS, TRANSCRIPTS, OR REAL EVIDENCE IT**  
12 **INTENDS TO USE.**

13 The defense hereby moves for an order that the prosecution be required to provide the  
14 defense with copies of any photographic, demonstrative, auditory, or real evidence it intends to  
15 present to the jury prior to opening statements so that the defense may review and be heard on such  
16 evidence outside the presence of the jury.

17 Furthermore, should the prosecution seek to introduce any audio recorded statements of  
18 the Defendant and/or witnesses in this case, the Defense requests that any audio recording and/or  
19 its corresponding transcript should be reviewed by this court and by the defense for any irrelevant  
20 and prejudicial material that violates Defendant's right to Due Process; to Competent Counsel; to  
21 Equal Protection; to Confrontation; and to Remain Silent; under the First, Fourth, Sixth, Eighth,  
22 Ninth, Tenth, and Fourteenth Amendments to the United States Constitution; relevant provisions  
23 of the California Constitution; and the California State and Federal statutory and case law  
24 previously cited herein.

25 **Granted:** \_\_\_\_\_

**Denied:** \_\_\_\_\_

1                   **5. MOTION TO EXCLUDE ALL WITNESSES NOT PROPERLY**  
2                   **DISCLOSED UNDER PENAL CODE §1054.1.**

3                   The defense moves to exclude all prosecution witnesses not properly disclosed under Penal  
4 Code section 1054.1. Penal Code section 1054.1 requires the prosecution to disclose, in pertinent  
5 part,

6                   (a) The names and addresses of persons the prosecutor intends to call as  
7 witnesses at trial. . . . (f) relevant written or recorded statements of witnesses or  
8 reports of the statements of witnesses whom the prosecutor intends to call at the  
9 trial, including any reports or statements of experts made in conjunction with  
10 the case, including the results of physical or mental examinations, scientific  
11 tests, experiments, or comparisons which the prosecutor intends to offer in  
12 evidence at the trial.

13                   The time limit for such disclosures is laid out in Penal Code §1054.7. Penal Code §1054.7 states  
14 in pertinent part, “The disclosures required under this chapter **shall** be made at least 30 days prior  
15 to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred.  
16 . . . ‘Good cause’ is limited to threats or possible danger to the safety of a victim or witness, possible  
17 loss or destruction of evidence, or possible compromise of other investigations by law  
18 enforcement.” (Bold added.)

19                   Therefore, defense counsel requests the prosecution be prohibited from calling any witness  
20 either not listed in the police report or not provided at least 30 days prior to trial as required by  
21 Penal Code §1054.7.

22                   **Granted: \_\_\_\_\_ Denied: \_\_\_\_\_**

23                   **5. MOTION TO PROHIBIT PROSECUTION WITNESSES FROM**  
24                   **COMMENTING ON THE VERACITY OF OTHER WITNESS TESTIMONY.**

25                   The defense objects to any questions directed at one witness concerning the veracity of  
26 another witness. It is patently improper for the prosecutor to question one witness concerning the  
27 veracity of another, such as “if witness X said Y would he be lying or mistaken?” “[C]ounsel  
should not ask one witness to comment on the veracity of the testimony of another witness.”  
[Citation.]” *United States v. Sanchez* (9th Cir. 1999) 176 F.3d 1214, 1218-1220. “It is the jurors’

MOTIONS IN LIMINE 23CM00067 PEOPLE V. XINGFEI LUO - 7

1 responsibility to determine the credibility . . . Testimony regarding a witnesses' credibility is  
2 prohibited unless it is admissible as character evidence." *United States v. Sanchez-Lima* (9th Cir.  
3 1998) 161 F.3d 545, 548.

4  
5 **Granted:** \_\_\_\_\_

**Denied:** \_\_\_\_\_

6  
7 **6. ORDER THE PROSECUTION TO DISCLOSE ALL INFORMATION IT  
8 INTENDS TO USE TO IMPEACH THE DEFENDANT.**

9 The defense hereby moves this Court to order the prosecution to disclose any impeachment  
10 evidence involving moral turpitude that bears on Defendant's credibility that it intends to use  
11 against Defendant should Defendant elect to testify, so the defense may have an opportunity to be  
12 heard with respect to such evidence. Evidence Code §402; *People v. Castro* (1985) 38 Cal.3d 301;  
13 *People v. Wheeler* (1992) 4 Cal.4th 284; *People v. Beagle* (1972) 6 Cal.3d 441, 453.

14  
15 **Granted:** \_\_\_\_\_

**Denied:** \_\_\_\_\_

16 **7. MOTION TO REQUIRE THE DEPUTY DISTRICT ATTORNEY TO  
17 DISCLOSE ORAL STATEMENTS MADE TO THE PROSECUTOR'S OFFICE  
18 BEFORE OR DURING TRIAL BY WITNESSES, INCLUDING LAW  
19 ENFORCEMENT WITNESSES.**

20 Oral statements are discoverable. If the prosecutor's office speaks with its witnesses, the  
21 defense asks that any statements made be discovered to defense counsel. *See People v. Rowland*  
22 (2004) 124 Cal.App. 154.

23 In this case, we believe the prosecution's witness, Tomas Czodor, has contacted the District  
24 Attorney more than once to discuss the prosecution against Ms. Luo. There was a complex  
25 restitution hearing relating to the previous case that took place in between the alleged date of  
26